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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 336

AMERICAN COMMUNICATIONS ASSOCIATION, C. I. O., JOSEPH P. SELLY, ETC., ET AL., APPELLANTS

v.

CHARLES T. DOUDS, INDIVIDUALLY AND AS REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD, SECOND REGION

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEE

OPINIONS BELOW

The opinions of the statutory three-judge court (R. 18–21) are reported at 79 F. Supp. 563.

JURISDICTION

The order of the court below, denying a motion for a temporary injunction and dismissing the complaint, was entered on August 11, 1948 (R. 21–22). An appeal was allowed on August 19, 1948 (R. 23–24) and the notice of appeal was filed on August 20, 1948 (R. 24–25). This Court noted probable jurisdiction on November 8, 1948

(R. 28). The jurisdiction of this Court rests on 28 U. S. C. 1253, 2282 and 2284.

STATUTE INVOLVED

Section 9 (h) of the National Labor Relations Act as amended by Section 101 of the Labor Management Relations Act of 1947, 61 Stat. 136, 29 U. S. C., Supp. I, 141, *et seq.*, provides as follows:

> No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35A of the Criminal Code shall be applicable in respect to such affidavits.

Other pertinent provisions of the original National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et eq.*) and of the Labor Management Relations Act of 1947, are set forth in Appendix A, *infra*, pp. 127–143.

STATEMENT

On or about June 16, 1944, the National Labor Relations Board certified the American Communications Association (hereinafter referred to as A. C. A.), affiliated with the Congress of Industrial Organizations, as exclusive bargaining representative of the radio telegraph workers employed by Press Wireless in New York and California (R. 1–2). Pursuant to the certification, A. C. A. and Press Wireless entered into a series of collective bargaining contracts covering the employees in the unit (R. 2). The most recent contract was entered into on August 13, 1947. The contract provided that it shall remain in effect until August 7, 1948, and thereafter, from year to year, unless written notice of termination shall be given by either party not less than sixty days "prior to the end of the then current term." Neither party gave written notice of termination prior to June 7, 1948. (R. 2–3, 12.)

During the first week of June 1948, Commercial Telegrapher's Union (hereinafter referred to as C. T. U.), affiliated with the American Federation of Labor, filed in the office of the Second

Region, National Labor Relations Board, a petition for certification as exclusive representative of the employees of Press Wireless in the unit then represented by A. C. A. The Regional Director of the Second Region, Charles T. Douds, thereupon notified A. C. A. of the filing of the petition and of the fact that A. C. A. had been designated as an interested party in the proceeding (R. 3, 12–13). On June 16, 1948, A. C. A. was advised by the Regional Director that since the petition for certification was filed by C. T. U. prior to the automatic renewal date of the contract between A. C. A. and Press Wireless, that contract was not, under the Board's rules, a bar to a determination of representatives, and that A. C. A. was disqualified from further participation in proceedings leading to resolution of the question concerning representation raised by C. T. U. by virtue of the failure of A. C. A. to comply with the provisions of Section 9 (f), (g) and (h) of the National Labor Relations Act, as amended (R. 4, 13).

On the same date, the Regional Director approved an agreement for a consent election entered into between C. T. U. and Press Wireless, pursuant to which an election by mail ballot was to be conducted by the Regional Director among the employees in the appropriate unit to determine whether or not the employees desired to be represented by C. T. U. as exclusive bargaining repre-

sentative.[1] The name of A. C. A. was to be omitted from the ballot. (R. 4, 13.)

On June 21, 1948, A. C. A. filed the statements contemplated by Sections 9 (f) and (g) of the Act, and thereafter requested that the Regional Director schedule a hearing on the petition which had been filed by C. T. U. and permit A. C. A. to appear on the ballot in any election scheduled pursuant to the petition. The Regional Director denied this request on the ground that A. C. A. was not in compliance with Section 9 (h). (R. 6, 14.)

On June 22, 1948, A. C. A. and Joseph P. Selly, individually and as President of A. C. A., Joseph F. Kehoe, Individually and as Secretary Treasurer of A. C. A., and Claudia Ezekiel Capaldo, a member of A. C. A. employed by Press Wireless, filed a complaint against Charles T. Douds, Individually and as Regional Director, in the District Court of the United States for the Southern District of New York. The complaint alleged, *inter alia*, that Section 9 (h) of the Act, as amended, is unconstitutional and that the conduct of the scheduled election by the Regional Director without affording A. C. A. an opportunity to participate in the proceeding or to appear on the election ballot would result in irreparable injury to A. C. A. and to the individual complainants.

[1] The ballots were to be mailed on July 8, 1948, and were returnable in New York on July 23, 1948 (R. 4, 13).

(R. 5–9, 13–16.)[2] The complaint prayed that a three-judge court be convened pursuant to Title 28, U. S. C. 380a, and that the court enjoin the defendant from conducting any election pursuant to the consent agreement between Press Wireless and C. T. U., and from conducting any election affecting the employees in the unit involved without permitting A. C. A. to appear on the ballot (R. 9–10).

On June 24, 1948, appellants' motion for injunctive relief came on for hearing before a three-judge court composed of Circuit Judge Swan and District Judges Coxe and Rifkind, together with a similar motion for injunctive relief in a case

[2] The complaint further alleged that the Board erred in construing the statute as authorizing exclusion of an otherwise interested non-complying union from participation in a representation proceeding which is inaugurated on petition of a rival union (R. 4–5). In the argument before the court below, the appellee contended that the question of statutory construction was not subject to judicial review in such a proceeding, citing, *inter alia*, *National Maritime Union* v. *Herzog*, 334 U. S. 854, in which this Court passed only upon the validity of Section 9 (f) and (g) of the Act, and, as the Board had urged in its Motion to Affirm, did not consider or pass upon the question of statutory construction (whether the Act authorized exclusion of an interested non-complying union from the ballot), which appellant had also presented for decision. The court below in this case apparently agreed with the appellee's contention because it did not consider or pass upon the question of statutory construction. Appellants did not assign as error this action of the court below, nor does it here contend that this Court has jurisdiction to pass upon the question. The discussion of the point in appellants' brief (p. 14, note 6), is predicated

involving virtually identical questions.[3] The appellee orally moved that the complaint in both actions be dismissed on the ground that each failed to state a claim upon which relief could be granted. (R. 17–19.)

On June 29, 1948, the court entered its opinion in the case of *Wholesale and Warehouse Workers, et al.* v. *Douds, etc.*, holding that the individual plaintiffs lacked standing to sue, and further holding, Judge Rifkind dissenting, that Section 9 (h) as applied in that case was constitutional and valid for the reasons stated by the United States District Court for the District of Columbia in *National Maritime Union* v. *Herzog*, 78 F. Supp. 146. Because appellants had failed to

however, on the assumption that this Court assumed jurisdiction and actually decided the question of statutory construction adversely to the appellant in the *N. M. U.* case. Although we believe that this interpretation of the holding in the *N. M. U.* case is erroneous, it is immaterial to any of the issues before the Court upon this appeal whether appellants' interpretation or that of the Government is correct.

It may be said at this point, however, that any suggestion that this case could or should be disposed of on grounds of statutory construction in order to avoid decision of the constitutional question must be rejected if for no other reason than the pendency of *United Steel Workers of America, C. I. O., et al.* v. *National Labor Relations Board*, pending on petition for certiorari, No. 431, this Term, in which the constitutional question cannot be avoided on the statutory construction grounds described in this note.

[3] The companion case was *Wholesale and Warehouse Workers Union, Local 65, et al.* v. *Douds, etc.*, Civil Action No. 46–157, in the District Court of the United States for the Southern District of New York (R. 17).

notify the Attorney General of the pendency of the action in the instant case, the court withheld entry of an order in this case pending the filing of a waiver of notice. The court stated that upon filing of such a waiver, the instant case would be disposed of in conformity with the decision in the *Wholesale and Warehouse Workers* case. (R. 20–21). On August 5, 1948, the Attorney General by letter filed with the court waived the notice required by Section 380a of the Judicial Code, and on August 11, 1948, the court entered its order granting the appellee's motion to dismiss the complaint and denying the appellants' motion for a temporary injunction (R. 21–22).

SUMMARY OF ARGUMENT

I

The restrictions upon access to Board facilities and upon receipt of benefits under the Act which are contained in Section 9 (h) were designed by Congress to guard against disruptive activities affecting commerce engaged in by labor unions for the purpose of achieving objectives alien to the purposes and policies of the Act. Congress reasonably believed that officers of labor organiza-

[1] In the light of this holding, the Regional Director in the instant case proceeded to conduct the scheduled election among the employees of Press Wireless. The ballots were counted on July 23, 1948 and the tally of ballots showed that 95 out of 114 eligible employees voted; 79 for the C. T. U. and 16 against. The Regional Director thereupon certified C. T. U. as the exclusive representative of the employees in the unit.

tions who were Communists or were affiliated with the Party, or who believed in violent overthrow of the government, would tend to use their positions of power in unions to promote industrial conflict rather than collective bargaining; to provoke strikes for political purposes in disregard of legitimate trade union needs and objectives; and to serve the interests of Soviet Russia against those of the United States. Evidence before Congress, the experiences of prominent trade union leaders, and of other qualified persons, and events abroad, all demonstrate that Communist officers of trade unions have utilized the power of their positions for these purposes. Congress could therefore reasonably conclude as it did, that extension of the benefits and protection accorded in the Act to labor organizations led by Communists and their supporters would not tend to effectuate but would defeat the policies of the Act, and that, in view of the power of such organizations to cripple our industrial production, denial to them of such benefits and protection was necessary to insure national security.

That Congress has power to guard against the abuse of benefits which it grants for legitimate purposes by denying them to those who it has reasonable cause to believe will misuse them is not open to question. Nor can it be doubted that the fomenting of labor unrest and strikes for the purpose of hampering execution of American foreign policy, or for other political purposes unrelated

to the subject matters of collective bargaining, constitutes an economic evil which is amenable to Congressional control under the Commerce Clause. Section 9 (h), which seeks to safeguard the objectives and policies of the Act against abuse by denying its benefits to labor organizations led by Communists and their supporters is therefore clearly a valid exercise of the commerce power.

Since, as we show in Points II and III, Section 9 (h) does not impinge upon civil rights, it is sufficient that Congress could reasonably believe the Section necessary to the accomplishment of a legitimate objective under the commerce power. But in any event, the substantive evils resulting from Communist control over labor organizations are so serious, and the imminence of their occurrence so clear, that steps taken by Congress to remove Communists from positions of power in labor organizations would clearly be proper even if such steps could be deemed to encroach upon civil rights and the "clear and present danger" test were therefore applicable. That test permits restriction upon the exercise of civil rights wherever, as here, such exercise threatens imminently to result in a serious evil which Congress is empowered to prevent.

The provisions of Section 9 (h) constituted a reasonable and appropriate means of assuring that the benefits and facilities of the Act shall not be extended to labor organiations led by Communists

or their supporters, or persons who advocated violent overthrow of government. Congress could rationally conclude, as it did, that such officers were more likely than others to utilize the powers of union office for purposes inimical to the policies of the Act. Since the means used are reasonable it is immaterial that other methods might also have been available.

II

Denial of access to Board facilities to labor organizations where officers do not comply with Section 9 (h) does not deny to such organizations any constitutional rights. Certainly, Congress was not required by the Constitution to enact the National Labor Relations Act, and the rights under that Act are no more immune from legislative control than other rights created by statute. While complying organizations which have access to Board facilities are placed in a more advantageous position to compete for employee support, non-complying unions are not, by that token, either in fact or in law denied the right to function. The power to determine whether to be represented by a complying or non-complying union is left by the statute in the hands of the employees themselves. Congress is empowered to achieve legitimate objectives under the Commerce Clause by offering inducements to employees to select as bargaining agents those labor organizations which cooperate in the attainment of such objectives rather than those which do not. Even

assuming that Congress could not directly compel such choice, since the inducement is offered for a legitimate national purpose and does not coerce employees, it "does not go beyond the bounds of power." *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 591. The decision of this Court in *National Maritime Union* v. *Herzog*, 334 U. S. 854, is dispositive of appellant's claim that denial of the benefits of the Act to unions which do not comply with conditions validly imposed by Congress invades the right of such unions to function or the right of employees to bargain collectively through such unions.

Section 9 (h) likewise does not coerce labor organizations to select as officers persons who will file the affidavits rather than those who will not. It therefore does not encroach upon the right of union members to select their own officers or upon the right of any person to seek to become or remain a union officer. To the extent that the statute, by its offer of benefits, induces union members to select officers who qualify under Section 9 (h), the inducement is justified by the legitimate purpose of Congress to promote the objectives of the Act and safeguard national security.

III

Appellants' contention that Section 9 (h) must be tested by the clear and present danger rule because the Section invades the rights of union leaders to freedom of speech, and to freedom of

political belief and affiliation is unsound. Section 9 (h) does not prevent any labor leader from being a Communist, supporting Communist organizations by speech or writing, or believing in violent overthrow of government. For this reason the cases cited by appellants which hold that governmental restrictions upon speech, religious belief, publication or political association must be justified under the clear and present danger rule are inapplicable.

Even if it be assumed, contrary to the facts, that the statute denies to Communists, supporters of Communism, and advocates of violent overthrow of government, the right to hold office in a labor union, the statute could not be deemed a regulation of speech, press or assembly. It would still be no more than a regulation of the occupation of labor union office and, as such, is to be judged on the "reasonable basis" standard. For the right to hold office in a labor union seeking the benefits provided by law, like the right to engage in other occupations affecting the public interest, is subject to reasonable regulation.

Appellants' contention that the statute violates the First Amendment because the classification made in Section 9 (h) refers to political affiliation and belief ignores the fact that the affiliation and belief referred to have a direct bearing upon the manner in which, and the objectives for which, a union officer will utilize the powers of his position. The Communist Party, unlike other

political parties, notoriously seeks to attain its objectives not merely through constitutionally practiced political activities, but also, *inter alia*, particularly through the control of labor unions and the perpetration of strikes. It is thus much more than a political party, and it is the peculiar nature of the organization which justifies this legislation. The type of activity by the Party and its members or supporters who occupy office in labor unions, especially when it serves interests hostile to the United States, constitutes a proper subject for the exercise of legislative power.

Neither membership in the Communist Party nor belief in violent overthrow of the government are, as such, targets of the statute. The target is potential *conduct* which stems from such membership or belief. And the statute does not regulate the belief, but *conduct*—the holding of a union office. Where, as here, it is the possession of the beliefs which lead individuals to engage in the activities deemed to be harmful, classification of conduct to be regulated in terms of belief or affiliation is not condemned by the Constitution.

The proposition that belief or affiliation may properly be deemed to give rise to an inference concerning future conduct is illustrated by the decisions of this Court in *In re Summers*, 325 U. S. 561; *Hirabayashi* v. *United States*, 320 U. S. 81, and *Korematsu* v. *United States*, 323 U. S. 214. And many cases hold that when factors such as

belief, political affiliation, race and the like are used as a basis for legislative classification, validity is to be tested not by the "clear and present danger" rule, but in terms of whether the factor used has a reasonable relation to the particular legitimate object of the legislation. Among the most recent of these is *United Public Workers* v. *Mitchell*, 330 U. S. 75, where denial of government employment to persons who exercised their constitutional right to engage in political activity was upheld on the ground that Congress could reasonably consider such activity detrimental to the public service.

The cases cited by appellants to establish that government is without power to deny, on the basis of belief or affiliation, the use of facilities established by government for the purpose of assisting the dissemination of information are not in point, for the facilities and benefits of the Act were created by Congress not to facilitate the dissemination of information, but to promote collective bargaining and industrial peace.

Section 9 (h) is clearly not an attempt to prescribe orthodoxy of political views. The affidavit provision of the Act cannot, therefore, be assimilated to the "test oaths" utilized historically as a means of suppressing heretical religious beliefs. The mere requirement that one take a qualifying oath respecting one's views is not proscribed by the Constitution and is not itself an evil.

Since proper basis exists to support the classification made in Section 9 (h), congressional prejudice, real or alleged, cannot constitute an excuse for its invalidation. Cf. *Sonzinsky* v. *United States*, 300 U. S. 506, 513–514.

IV

Section 9 (h) is not unconstitutionally indefinite. The particular phrases appellants attack are words of generally understood meaning, although there will, of course, be a question as to their application to border-line situations. The fact that there will be doubtful cases does not render a statute unconstitutionally indefinite, when there is a hard core of circumstances as to which the ordinary person would have no doubt as to its application. Furthermore, the present statute can only be violated by a wilful offender; it establishes a subjective test. This requirement of wilfulness relieves the statute of the objection that it punishes without warning an offense of which the accused was unaware. In no case in which *scienter* was an element of the offense has the Court held a statute invalid for indefiniteness. This is true even as to statutes operating in the field of First Amendment rights, as *Winters* v. *New York*, 333 U. S. 507, suggests. But in any event, for reasons already stated, this statute does not impinge upon First Amendment freedoms and thus is not subject to the higher standard of definiteness.

V

Section 9 (h) is not a bill of attainder. It imposes no punishment, and does not even impose qualifications for union office, but only reasonable conditions upon a union's right to the benefits accorded by the National Labor Relations Act. But even assuming that it can be construed as denying the right to hold union office, it is not a bill of attainder but merely a lawful prescription of qualifications for persons undertaking a fiduciary responsibility affecting the public interest. Many cases establish the legislative power to impose qualifying requirements on persons seeking to engage in particular occupations.

ARGUMENT

I

SECTION 9 (H) IS A REASONABLE AND VALID EXERCISE OF CONGRESSIONAL POWER UNDER THE COMMERCE CLAUSE

A. BY ENACTING SECTION 9 (H), CONGRESS SOUGHT TO EFFECTUATE THE NATIONAL POLICY DECLARED IN THE ORIGINAL NATIONAL LABOR RELATIONS ACT

The purpose of Congress in enacting the original National Labor Relations Act in 1935 (49 Stat. 449, 29 U. S. C. 15, *et seq.*) was to reduce interruptions to commerce caused by strikes. That Act declared it to be (Section 1):

> the policy of the United States *to eliminate the causes of certain substantial obstructions to the free flow of commerce and*

> *to mitigate and eliminate these obstructions when they have occurred* by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. [Italics supplied.]

The elimination of the causes of obstructions to the free flow of commerce was not only the Congressional purpose and policy; but it was, in addition, the constitutional justification for the regulatory provisions of the Wagner Act. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1.

In amending the National Labor Relations Act by enacting Section 9 (h), the congressional purpose was the same. And, in our view, that provision has the same constitutional justification. Indeed, in amending the Act, Congress incorporated into Section 1 the following finding:

> Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the

> public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

The Labor Management Relations Act of 1947 thus included provisions designed to eliminate practices obstructive of commerce and inconsistent with the statutory policy by denying the benefits of the Act to certain employees or labor organizations. To guard against the dangers of divided allegiance, Congress denied the benefits of the statute to labor organizations composed of supervisors (Sections 2 (3), 2 (11), 14 (a)), and to labor organizations composed of rank and file workers when they seek to represent plant guards (Section 9 (b) (3)). To "protect the rights of individual employees in their relations with labor organizations whose activities affect commerce" (Section 1 (b)), Congress, in Sections 9 (f) and (g), provided for denial of the benefits of the Act to labor organizations which failed to file and disclose to union members specified financial and structural reports and information.

This latter requirement, that labor organizations which desire to use the benefits of the Act file and make available to union members information relevant to the functioning of such organizations and to the obligations and privileges of membership, was sustained by this Court in *National Maritime Union* v. *Herzog*, 334 U. S. 854. Its provisions were designed to assist the intelligent

exercise by union members of the public rights which the statute undertook to protect. As such, they were clearly a valid exercise of Congressional power under the Commerce Clause.

The provisions of Section 9 (h) are part of a pattern of restrictions imposed by Congress upon its grant of the benefits of the Act for the purpose of guarding against misuse of those benefits and frustration of the legitimate objectives of the statute. Section 9 (h) was the product of the determination by Congress that certain practices of labor organizations whose officers were members of or supporters of the Communist party, or who believed in or supported organizations which advocated violent overthrow of the Government, were inimical to the purposes for which the protection of the statute was granted. Congress determined that extension of the benefits of the Act to such labor organizations would not serve to promote the policies of the Act, and might endanger national security interests. As we shall demonstrate, Congress believed that Communists and their supporters do not view labor unions primarily as instrumentalities for the improvement of the economic position of employees vis-a-vis their employers, but rather as weapons in a struggle to achieve political ends, detrimental to the liberties, privileges and immunities of the people. Congress further believed that Communists and their supporters, and persons who ad-

vocate violent overthrow of the government, when they attain positions of power and leadership in a labor union, would be likely not to practice collective bargaining as a method of "friendly adjustment" of employer-employee disputes, but instead as a vehicle for promoting strife between employers and employees. Congress also believed that Communists and their supporters, and persons who advocate violent overthrow of the government, if in control of labor organizations, would be prone to provoke strikes disruptive of interstate commerce, not for the purpose of improving the economic lot of union members, but for political purposes. And finally, Congress believed that officers of labor organizations who are Communists, or supporters of Communism, would be likely, in periods of national emergency, to utilize their power within such organizations to call and promote strikes contrary to the interests of our government, if those interests happened to be opposed to the interests of a foreign power, Soviet Russia.

B. CONGRESS REASONABLY BELIEVED THAT THE POLICIES OF THE ACT AND THE SECURITY INTERESTS OF THE NATION WOULD NOT BE FOSTERED BY EXTENSION OF THE BENEFITS OF THE ACT TO LABOR ORGANIZATIONS WHOSE OFFICERS ARE COMMUNISTS OR SUPPORTERS OF ORGANIZATIONS DOMINATED BY COMMUNISTS

In its report recommending enactment of a predecessor provision to Section 9 (h), the House Committee on Education and Labor stated (H. Rep. No. 245, 80th Cong., 1st Sess., p. 39): "Communists use their influence in unions not to benefit

workers, but to promote dissension and turmoil." Congressman Hartley, manager of the bill in the House, urged that the benefits of the Act should be limited to labor organizations whose leaders were "devoted to honest trade unionism and not class warfare and turmoil." (93 Cong. Rec. 3425).

Numerous Congressmen, during the course of debate, indicated their belief that, in periods of national emergency, Communist leaders of trade unions might promote strikes for the purpose of undermining the ability of the Government to effectuate its policies (93 Cong. Rec. 3626–3634). Representative Kersten pointed out (93 Cong. Rec. 3519): "We know that it is the purpose of the Communist Party to use the labor union as a tool to bring about the spread of their antihuman doctrine."

In the Senate, Senator McClellan, sponsor of Section 9 (h), stated (93 Cong. Rec. 4894):

> * * * a small minority of Communists are able to infiltrate into these organizations, and by the processes under which they operate they are able to rise, and they have risen, in some unions to official positions. * * * If they rise to positions of power as officers in labor organizations, then, with the law that we enact, investing certain powers in labor organizations, such as the power of collective bargaining, and other powers and rights that we have legislated and invested in them, we are simply placing the power and authority and the

> sanction of law behind men who are in those positions, giving them authority to bargain collectively, to deal with management of industry, and thus wield a greater influence in the economic and political life of the Nation. We are simply giving authority to people who are not loyal to our Government, who will use that power as Communists have demonstrated in the past they will use it, for the purpose of subversive work and for undermining the very fundamentals upon which this Government rests.

The opponents of the measure attacked it not because its objective was improper, but because they did not believe that the means selected for coping with the danger were wise. For example, Senator Morse stated (93 Cong. Rec. 5109): "I need not reiterate my opposition to Communists and their beliefs. I shall fight communism with all my energy because it destroys the liberties of freemen. I want to say that communism must be stamped out of the free labor movement of this country, if we are to preserve the rights of free workers and protect the dignity of the individual." President Truman, in his veto message stated (93 Cong. Rec. 7488): "Congress intended to assist labor organizations to rid themselves of Communist officers. With this objective I am in full accord." The President opposed the provisions of Section 9 (h) on the ground that the method therein adopted to achieve this objective would in itself tend to promote strikes, since

labor organizations denied access to Board facilities because one or more of their officers refused to file the affidavit would be compelled to strike to secure redress against employer unfair labor practices.

The conclusions of Congress, that Communist leaders of labor organizations might utilize the privileges accorded by the Act to foster policies other than the collective bargaining favored by Congress, derived from the personal experience and observation of the legislators and from testimony before the House and Senate Committees which considered the bill, and they comport with the conclusions reached by other Committees of Congress, with the judgment of many trade union leaders and numerous experts in the field of industrial relations, and with the experience of countries where the Communists have gained substantial control of labor unions. Much of that supporting evidence is spelled out in the majority opinion in *National Maritime Union* v. *Herzog*, 78 F. Supp. 146, 168–171, 175–176, affirmed, 334 U. S. 854. We here set it forth.

1. The evidence compiled by the Committees of Congress

In 1941, the House Committee on Un-American Activities stated in its report (H. Rep. No. 1, 77th Cong., 1st Sess., pp. 9–10):[5]

[5] See, also, H. Rep. No. 2, 76th Cong., 1st Sess., pp. 46–64 (1939), describing Communist penetration of labor unions.

The evidence which the committee has gathered bears abundant testimony to the fact that throughout the years there has been a major purpose of the Communist Party to attempt to bore from within the ranks of the American labor (sic) in an effort either to turn labor organizations into its political tools or to disrupt and destroy them. * * *

It is of basic importance to understand the exactly opposite purposes of the American labor movement on the one hand and the Communist Party on the other. The aims of the American labor movement are to improve the conditions of the American workers and over a period of time to secure for them a better and fuller life and a place of partnership in the industrial life of the United States. The purposes of the Communists on the other hand are in the words of Stalin to make the unions a school of communism, to increase in every possible way the antagonism between wage earners and other sections of the population and to prostitute the labor movement for the use of the party in carrying out various of its international plans even if in so doing the welfare of the particular group of workers in question may suffer as a consequence. Hence, wherever Communists have gained a foothold in the labor movement they have sought by every means at their command to remove from office any leader however devoted to the welfare of the rank and file workers he might be who

has refused to cooperate with the party line.

* * * * *

We find that the program of the Communist Party calls for determined opposition to the national-defense program and for a concentration of efforts in basic and war industries. The committee's records show that from the Communist standpoint the main purpose of a strike is political and in order to further in some way or another the program of Moscow. Clearly, this could be served by the bringing about and prolonging of strikes in defense industries. Thus we see again how diametrically opposite are the aims and purposes of the American labor movement on the one hand and the Communist Party on the other.

The House Committee which considered Section 9 (h) heard Louis Budenz, onetime managing editor of the official Communist newspaper, The Daily Worker, and former member of the National Committee of the Communist Party, testify that, to his knowledge, a strike which occurred in 1941 at the Milwaukee plant of the Allis-Chalmers Company, had been deliberately precipitated and provoked by the Communist officers of the local union at that plant as a result of instructions delivered to those officers by the Political Committee of the Communist Party; and that the purpose of the strike was not to improve the economic position of the employees

but to impede the American program of giving aid to Britain, and thereby to assist the effectuation of the foreign policy of the Soviet Union.[6] Mr. Budenz further testified that Communist leadership during this period, had, for the same reason, precipitated a strike at the North American Aviation Company.[7] The effect of the strike at the Allis-Chalmers plant on the defense program was related to the House Committee by Mr. Storey, Vice President of the Company. He testified that the strike, lasting 76 days, held up for that period delivery of power units (turbo-generators) "to a plant that the Government wanted to build to make powder during the wartime."[8]

On the floor of the House, Congressman Kersten summarized Mr. Budenz' testimony concerning the Allis-Chalmers strike, as an example of the dangers of vesting additional power in the hands of labor leaders who are Communists or supporters of the party. He said (93 Cong. Rec. 3519):

> One example of Communist tactics that came to the attention of our committee * * * is the example testified to

[6] Hearings before the House Committee on Education and Labor on bills to amend the National Labor Relations Act, 80th Cong., 1st Sess., pp. 3603–3623. See also, pp. 1380–1487, 1973–2142. Compare Hearings before the Senate Committee on Labor and Public Welfare, 80th Cong., 1st Sess., on S. 55 and S. J. Res. 22, pp. 819–873.

[7] House Hearings, *op. cit.* n. 6, pp. 1384–1385.

[8] *Ibid.*, p. 1385.

by Mr. Louis Budenz, former editor of the Communist Daily Worker. Budenz testified that the Communist Party Political Committee in New York decided in the year 1940 that a strike should be called in the Allis-Chalmers Co., of Milwaukee, because they were one of the few firms making steel turbines for United States destroyers and that by pulling the strike in that plant they could bring about a following of the party line at that time of opposing aid to Britain. That was before Hitler attacked Russia. Budenz testified as to traveling to Milwaukee and meeting in secret with Mr. Eugene Dennis, present secretary of the Communist Party and with Mr. Harold Christoffel, the Communist Party member and president of the Allis-Chalmers local, at which secret meeting it was decided to strike the plant pursuant to the decision in New York of the Communist Party. * * * It was later determined by the Milwaukee courts that over 2,000 of the strike ballots were fraudulently stuffed into the boxes. That the Communist Party, as agents of a foreign government, should be able to cause a strike in an American plant is horrifying. * * *

Congressman Hartley stated to the House (93 Cong. Rec. 3424), that "If anyone doubts the need of [Section 9 (h)] all you have to do is to read the testimony taken by our subcommittee in connection with the Allis-Chalmers strike in Mil-

waukee and you will understand that section of the bill is most in order."*

Congress was not unaware that Communist officers of labor organizations sometimes seem effectively to represent the economic interest of members in collective bargaining, and in grievance adjustment. But Congress believed that whatever public value Communist leadership of labor unions might have in this respect was clearly and overwhelmingly outweighed by the fact that their objective is to utilize their power and influence for purposes inimical to the policies of the Act and to national security. Mr. Storey testified that (House Hearings, *supra*, pp. 1392–1393):

> the Communists cleverly intertwine grievances, we will say real grievances, imagined grievances, and then they make up grievances to cause unrest. So that they appear to be carrying on good trade-union practices at times. They delude the workers and * * * that is one of the reasons that our workers do not appreciate the menace of communism, because they seem to be working for the benefit of the workers in a trade-union area.

Congressman Kersten stated to the House (93 Cong. Rec. 3519):

> * * * in times past, Communists and their fellow travelers made a specialty of

* See also, Hartley, *Our New National Labor Policy* (Funk & Wagnalls Co., 1948), pp. 40, 179.

studying trade unionism and the technique of the union hall. They became experts in the knowledge of trade-union matters so much so that many good American workers have been willing to place their fate in the hands of party-line officers only to find that they became the dupes of Communist tactics. * * *

The foregoing evidence with respect to the practices and objectives of Communists and their supporters, who attain positions of power and leadership in labor unions, is confirmed and augmented by the recent "Investigation of Communist Infiltration of UERMWA", conducted by a subcommittee of the House Committee on Education and Labor.

This subcommittee heard Mr. James B. Carey, Secretary-Treasurer of the C. I. O., and former president of the United Electrical, Radio and Machine Workers of America, C. I. O., testify that "the present president, the secretary-treasurer, the organizational director, and the executive board" of the UE sacrificed "the interests of the UE to promote the foreign policy of the Soviet Union"; and that "side by side with this attempted advancement of Soviet policy has gone a destruction of the democratic processes within the union", for candidates for union office have been supported, "not on the basis of merit or ability as union men, but because of their willingness to accept orders from the Communist Party to con-

trol the UE."[10] The subcommittee also heard Dr. Joseph B. Matthews, formerly director of research for the House Un-American Activities Committee, demonstrate, by a comparison of the publications of the UE and those of the Communist Party and its front organizations, over the past ten years, that the UE "toes the Kremlin line on all questions". Dr. Matthews further described how half a dozen Communist Party members, who were employed in the vital General Electric Plant at Schenectady, N. Y., forged several thousand union cards and dues receipts, and thereby obtained control of UE Local 301 at that plant.[11]

On the basis of the testimony of these and numerous other witnesses, the subcommittee issued, on December 14, 1948, an Interim Report, finding that (H. Committee Rep. No. 15 80th Cong., 2nd Sess., p. 19):

> The Communist Party seeks sources of power that can paralyze America. It has gained a strong foothold in one of the Nation's most strategic industries: the electrical industry. It dominates the largest labor union in that industry: The United Electrical, Radio and Machine Workers of America. It has seized control of its na-

[10] Hearings before a Special Subcommittee of the House Committee on Education and Labor, 80th Cong., 2d Sess., pursuant to H. Res. 111, pp. 43–45.

[11] Hearings, *op. cit.* n. 10, pp. 167, 169–172; see also, pp. 213–215, 353–354.

> tional office, the executive board, the paid staff, the union newspapers, and a number of its district councils and locals. * * *
>
> Many of the products of the industry with which the union has contracts relate to national defense. They are; Radar, jet propulsion, signalling devices, electrical instruments for airplanes and submarines and the machinery to make atomic energy. * * *
>
> The above facts taken together constitute a serious threat to the security of the United States.
>
> * * * * * *
>
> The hold of the Communists on America's electrical industry is the hold of Soviet Russia. It is Communism in action—now. It is not an historical; it is a present danger.

The subcommittee's conclusion that Communist control of labor organizations in strategic industries is "a present danger" to the country's security was iterated by the House Committee on Un-American Activities, in a new pamphlet entitled "100 Things You Should Know About Communism and Labor" (Gov't Print. Off., 1948). This pamphlet, which is based upon the extensive hearings held by that Committee on Communist activity in America, points out (p. 10) that Communists join unions specifically for the purpose of making them "schools of Communism," and that, in case of conflict between the union's interest and Communist Party orders, the "Communist Party comes first." The pamphlet then

lists (pp. 14–15) some twenty unions in key industries, including appellant American Communications Association, which have "Communist leadership strongly entrenched." With this background, the pamphlet continues (pp. 15–16):

74. *What would Communists do in the event of war between the United States and the Soviet Union?*

They say themselves they would "stop the manufacture and transport of munitions," as well as "the transport of all other materials essential to the conduct of war through mass demonstrations, picketing, and strikes." They would try to "stall the (American) war machine in its tracks."

75. *Have the Communists ever carried out such a policy in the United States?*

Yes, during the Stalin-Hitler pact (1939–1941) they caused terrible strikes that delayed U. S. rearmament. For example, Allis-Chalmers, Milwaukee; International Harvester, Harvil plant in Los Angeles; Vultee Aircraft, North American Aviation, Los Angeles; Aluminum Co. of America, Cleveland; the Mine, Mill and Smelter Workers at Trona, Calif., and in Connecticut brass factories, all were led by the Communists.

76. *What could the above cited American Communications Association do in case of war?*

This outfit is in our cable offices and in the radio control rooms of our merchant ships and commercial airfields. They could

> garble messages so as to sink ships, wreck planes, tap intelligence channels, and isolate us from the rest of the world.

Referring again to the appellant American Communications Association, the pamphlet states (p. 17) that, during the period of the Stalin-Hitler Pact Joseph Selly, president of the union, "led a movement against U. S. armaments, saying 'Don't give us any baloney about "patriotism" and "national defense".' "

2. The experiences of prominent labor leaders

The conclusions of the Congressional committees are confirmed by the experiences of prominent leaders of national labor organizations who have had closer contact with the problem; both join to demonstrate that diversity exists between the economic goals of trade-union activity which Congress seeks to foster and protect in the Act, and the political objectives toward which Communist leaders of trade-unions seek to orient their organizations.

In 1934, the Fifty-Fourth Annual Convention of the American Federation of Labor adopted a resolution relating to Communist infiltration into labor unions which read, in part, as follows:

> Members of the Communist Party have endeavored to bore within the trade-union movement and establish so-called cells within local unions for the purpose of destroying the trade-union movement by making it a part of the Communist politi-

> cal party so that the purposes and the method of applying the objectives of the Communist Party could be put into operation in the industrial field.[12]

In its Fifty-Fifth Convention, the Executive Council of the Federation adopted a report declaring that Communists "are not acting in the unions as trade-unionists, but rather as Communists. Instead of being loyal to their unions, they are loyal to their party." [13]

In the Fifty-Ninth Convention, in 1939, the Federation adopted a resolution recommending that Communists be excluded from membership in unions affiliated with the American Federation of Labor. The resolution declared in part: [14]

> It is the openly avowed and clearly stated purpose of the Communist Party to obtain control of labor unions in order first, to use them as recruiting grounds for more members and followers; secondly, to use them in order to spread inflammatory propaganda and so influence the great mass of workers;

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[12] Committee Report, Resolution No. 201—by Delegate Paul Porter, Radio Factory Workers Union, Federal Labor Union No. 18609, in Report of the Proceedings of the Fifty-Fourth Annual Convention of the American Federation of Labor, Judd & Detweiler, Washington, D. C., 1934, p. 557.

[13] Report of the Proceedings of the Fifty-Fifth Annual Convention of the American Federation of Labor, Judd & Detweiler, Washington, D. C., 1935, p. 832.

[14] Resolution No. 83 in Report of the Proceedings of the Fifty-Ninth Annual Convention of the American Federation of Labor, Judd & Detweiler, Washington, D. C., 1939, pp. 492, 505.

and thirdly, to use them to create strikes and make impractical demands in order to disrupt industry and then to seize it for the social revolution;

* * * * *

Communist agitators, working under definite instructions from the organized Communist Party, are constantly endeavoring to "bore from within" in every union, to the end that they may obtain positions of influence and control and so lead the workers along the road to Communism; and

In every instance where Communist-led groups have obtained any measure of such control in labor unions they have led the workers into strikes and industrial conflict, not for the legitimate purpose of bettering conditions, improving wages or hours, or defending the workers from attack, but for the radical purpose of developing class conflict, and for the purpose of creating situations which they could use for the spread of Communist propaganda;

* * * * *

These Communist leaders in their efforts to promote class warfare, and ignoring the legitimate purpose of labor unions and the legitimate interests of the workers, have disrupted unions, divided the workers into warring camps, crippled industrial production, and caused loss of jobs and wages to the mass of the workers * * *.

Impressive in this regard also is the experience of Joseph Curran, president of the National

Maritime Union (C. I. O.). Writing in the "Pilot," official newspaper of the N. M. U., President Curran recounted the efforts of Communists within the union during the period of hostilities between Germany and Russia, to force upon the union a policy of collaboration with employers and total abandonment of strikes, whatever the cost of such a policy to the economic interests of the union members. He pointed out, however, that since the end of the war, shortly after relations between the United States and Russia began to deteriorate, the Communists did their utmost to preclude the establishment of amicable relations and to provoke hostility between employers in the industry and the union. On both occasions, Curran pointed out, the policy advocated by the Communists in the union was "the policy of the Communist Party."[15] In the columns of the "Pilot" for October 10, 1947, Curran exposed the efforts of the Communists in the N. M. U. to gain control of the union convention. He said in part: "Any rank and filers who thought that this was a simple fight between officials for power can now see by the action of the Communists at this convention that it is not. It is a fight by the Communists to either control our Union or destroy it. Nothing less."[16] President Curran repeated this observation on October 24,

[15] N. M. U. "Pilot," September 12, 1947, page 2, cols. 3–4.
[16] "Pilot," page 2, cols. 2–3.

1947, in a column in which he also said: "They [Communist delegates] came to the convention fully instructed and with a program directed by the highest chiefs in the Communist Party. * * *. These party delegates [who voted contrary to the instructions of their union constituencies] proved beyond a shadow of a doubt that they represented NOT the membership of the NMU, but belonged body and soul to the Communist Party."[17] In a column appearing on November 7, 1947, Curran pointed out that by virtue of Communist control, "Instead of laying stress on the needs for jobs for our members and internal problems of our Union, the greatest space in the Pilot is devoted to the material that the Communist Party is pushing."[18] On November 21, 1947, Curran disclosed in his column that Communist leaders within the union, after their defeat in the convention, had undertaken to destroy the union, by promoting unnecessary strikes and by refusing to settle grievances amicably with employers.[19] And, on September 3, 1948, a Trial Committee of the N. M. U. found that three officials of the union, Ferdinand C. Smith, Howard McKenzie and Paul Palazzi, "subordinated the best interests of the Union and its members to the improper purposes of the Communist Party of

[17] "Pilot," October 24, 1947, p. 2, col. 2.
[18] "Pilot," p. 2, col. 2.
[19] "Pilot," p. 2, cols. 2–3; p. 9, col. 4.

America, which they served at the expense of the Union and its members and to the exclusion of the legitimate activities and purposes of the N. M. U."[20]

In an article appearing in the New York Times on May 11, 1947, David Dubinsky, President of the International Ladies Garment Workers Union (A. F. of L.), recounted the experience of that union in 1926, when, for a short period, the New York locals of that organization were subject to Communist leadership. These leaders, he stated,[21] "succeeded in plunging the coat and suit industry into a general strike. After a futile eight-week struggle the local Communist leaders had had enough. They were ready to come to a settlement, but the Communist Party, feeling that the Moscow line was about to change, ordered their agents inside the union to continue the strike—against their better judgment and against the interest of the workers. * * * It took ten years for us to recover from the criminal and stupid Communist-led strike of 1926 which cost $3,500,000 and left in its wake a chaotic industry and a crippled union." In the same article he explained.[22]

> The workers organizations are the largest and most vital nongovernmental body

[20] "Pilot," September 3, 1948, pp. 10–11.
[21] Part VI, p. 11.
[22] *Ibid.*, p. 7.

in the community. They are primarily dedicated to improving working conditions, to raising living standards. They are part of a delicate mechanism of modern life, the core of "human engineering." The influence of organized labor reaches far beyond its 13,000,000 members or their families.

For this reason the significance of Communist operations in trade unions can scarcely be exaggerated. Like termites, they bore into the "house of labor," but are not an integral part of the structure because the spirit and aims of totalitarian communism are totally distinct from and hostile to the ideals and policies of trade unionism.

In February 1945, while the Retail, Wholesale and Warehouse Employees Union (C. I. O.) was engaged in a strike provoked by the recalcitrant refusal of Montgomery Ward & Co. to bargain collectively with that Union, or to accede to directives of the National War Labor Board, locals of that Union, which were under Communist leadership, castigated the leadership of the national union severely for having undertaken the strike. The official union publication that month carried an article demonstrating that these attacks upon the national leadership of the union were a betrayal of the Union's interests, and were dictated only by adherence to the Communist Party "line" which, during that period, denounced all

strikes, and completely subordinated all legitimate trade-union interests to the need for continued production while the United States and Russia were allies in the war.[23]

The experience of the United Steel Workers of America (C. I. O.) with the activities of Communists and their supporters has been no different. President Philip Murray warned the Fourth Constitutional Convention of the union, which met at Boston in May, 1948, that "the Communists here in the United States will, if it serves their best purposes tomorrow, destroy this labor union, if by so doing they are following the line from Moscow."[24] At the May 14 session of the convention, the delegates overwhelmingly adopted an amendment to the union constitution which bars anyone, "who is a member, consistent supporter, or who actively participates in the activities of the Communist Party," from holding "any office or position," or from serving on any committee, "in the International Union or a local union."[25]

Mr. Murray repeated his attack on the activities of Communists in labor unions at the Tenth Constitutional Convention of the C. I. O., which was held in Portland, Oregon, in No-

[23] The Retail, Wholesale and Department Store Employee, February, 1945, pp. 5, 14. See also, Levenstein, *Labor Today and Tomorrow* (Knopf, 1945), pp. 165–169.

[24] "Steel Labor," June 1948, p. 3, col. 1.

[25] *Ibid.*, p. 2.

vember, 1948. At the November 23 session, he stated:[26]

> Their line never changes—that is to say, the line changes, yes, but their policy with reference to adherence to the Soviet line never changes. * * * They content themselves with a general castigation of their own government and the policies of their own government. They are conducting a cold war, and they are attempting to use this vehicle, this instrument, this organization as a means for the furtherance of their cold war propaganda.

And, at the November 26 meeting, he added:[27]

> * * * under no circumstances am I going to permit * * * Communistic infiltration into the National C. I. O. movement. I make that statement with sincere convictions based upon a knowledge that has come to me down through the years, of the damaging effects, the devastating effects, the degrading effects that special outside interests, particularly the Communist party, may have upon the labor movement in the United States of America.

3 The views of other qualified persons

Spokesmen for the Communist Party, former Communist Party officials, and students in the field of labor relations agree that Communist

[26] Daily Proceedings of the Tenth Constitutional Convention of the Congress of Industrial Organizations, Tuesday, November 23, 1948, p. 53.

[27] *Ibid.*, Friday, November 26, 1948, p. 12.

leaders of labor organizations utilize trade-unions not primarily as instruments for advancing the economic welfare of workers through the process of collective bargaining, but rather as weapons of class warfare for the advancement of political objectives.[28] In his book, *I Confess*, Benjamin Gitlow, formerly a prominent Communist, stated as follows:

> In the Communist movement, control is a factor of the greatest importance. Every Communist, no matter in what organization he belongs, has it continually hammered into his head that the objective of a Communist must be to gain control. As soon as Communists gain control of a union, a strike, or any kind of activity,

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[28] See, *e. g.*, Foster, *From Bryan to Stalin* (International Publishers Co., 1937), particularly pp. 153, 154, 213–215, 272–273, 275–277; Saposs, *Left Wing Unionism* (International Publishers Co., 1926), p. 64; "In the relations of the unions with employers and the government 'class struggle' tactics are counselled as against 'class collaboration' tactics"; Foster, *Toward Soviet America* (Coward-McCann, Inc., 1932), pp. 232–233, 258–259, 266; Gitlow, *I Confess* (E. P. Dutton & Co., Inc., 1940), pp. 334–395; Oneal & Werner, *American Communism* (E. P. Dutton & Co., Inc., 1947), pp. 231–236, 245–246, 312–313; Teller, *Management Functions Under Collective Bargaining* (Baker, Voorhis & Co., 1947), pp. 401, 405–409; Selekman, *Labor Relations and Human Relations* (McGraw-Hill, 1947), p. 206; Smith, *Spotlight on Labor Unions* (Duell, Sloan and Pearce, 1946), pp. 42–43, 63–64; Myers, *Do You Know Labor?* (National Home Library Foundation, 1940), pp. 18–19; Mills, *The New Men of Power* (Harcourt, Brace and Co., 1948), pp. 198–200, 202; Special Report, *The Communist in Labor Relations Today* (Research Institute of America, New York, March 28, 1946).

> the Party steps in and runs the union, leads the strike, and directs the activity.

A similar view was expressed by Professor Philip Taft of Brown University:[29]

> * * * The trade union is not an organization to which the Communist member owes any ultimate loyalty. Above it stands the "Party" which directs and organizes caucuses and gives orders on policy and program. Consequently Communist trade-union tactics are in the nature of a conspiratorial attack upon the integrity of the trade union, for policy is considered from the point of view of its effect not upon the trade union but rather upon the fortunes of the Communist Party. To capture and subvert the union becomes the principal aim of Communist trade-union policy. * * * Consequently, Communist opposition within trade unions stems from a desire to use the union as an instrument for purposes alien to its character rather than to improve its functioning *per se*.

And Roger N. Baldwin, Director of the American Civil Liberties Union, significantly points out that Communists, "alone of all political parties," follow this practice, i. e., of capturing leadership in unions "in the interest of their own political program and power."[30]

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[29] Taft, *Economics and Problems of Labor* (Stackpole & Hicks, Inc., 1948), p. 499.

[30] *Union Administration and Civil Liberties*, The Annals of the American Academy of Political and Social Science, Vol. 248, November 1946, p. 59.

4. The experience of other countries

The conclusion that when Communists or their supporters gain control of labor organizations the legitimate objectives of such organizations are subordinated to the political policies of the Communist Party is reaffirmed by the experience of countries like Italy and France, where Communist control of labor unions has become substantial. In Italy, the C. G. I. L., the largest of the existing labor confederations, is Communist-dominated. Notwithstanding the role that it has played in pressing for increased wages and social security benefits,

> the policies it followed even in these matters have often reflected the political affiliations of the majority of its leaders. Many of the strikes which have been called—particularly the general strikes—have been for purposes which were political rather than primarily economic. During the first 6 months of 1948, 436 work stoppages involving over 2.8 million workers were reported by the General Confederation of Italian Industry; 49 percent of these strikes, the Confederation attributed to causes other than economic.[31]

The French counterpart of C. G. I. L., the C. G. T., is likewise Communist-dominated. In

[31] *Postwar Labor Movement in Italy*, Advance release of an article scheduled to appear in the January, 1949, issue of the *Monthly Labor Review* (U. S. Dept. of Labor, Bureau of Labor Statistics).

November 1947, the C. G. T. ordered a wave of strikes which paralyzed basic industries in all parts of France. The strikes

> were generally ascribed in France to the new Communist tactics of attempting to embarrass the Government and impede adoption of the European Recovery Program by disrupting the national economy.[32]

On December 19, 1947, the principal non-Communist minority group within the C. G. T. formally seceded and set up a rival labor organization, the F. O. It charged that the strike crisis had been "politically inspired"; that the Communist majority had carried the C. G. T. along on its "political adventures," in open violation of the trade-union principle of political party neutrality.[33]

A recent statement issued by the General Council of the British Trade Union Congress demonstrates that, even in England, the Communists have attempted to force British trade union policy into conformity with political objectives dictated by Soviet Russia. The statement reads in part as follows:[34]

> After the overwhelming repudiation of Communist attempts at the recent Congress

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[32] *Labor Abroad*, December 1947, No. 5 (U. S. Dept. of Labor, Bureau of Labor Statistics), p. 3.

[33] *Ibid.*, February 1948, No. 6, pp. 1–3.

[34] This statement is set forth in Daily Proceedings of the Tenth Constitutional Convention of the Congress of Industrial Organizations, Monday, November 22, 1948, pp. 48–49.

in Margate to dominate Trade Union policy, the Communist Party leadership has declared that opposition to Congress decisions will be carried back * * * to the workshops and every effort made to incite Trade Unionists against the decisions taken in their name on the constructive economic policy of the T. U. C.

The attitude of the British Communists is in full conformity with that of Communist organizations in other countries, notably in France. * * *

These disruptive activities, the General Council are satisfied, are being carried on by the Communist Party and its subsidiary organizations in servile obedience to decisions made by the body calling itself the Cominform, which was set up in the Autumn of 1947 to carry on the International Communist propaganda, formerly conducted by the Communist International (The Comintern). * * *

Since its inception the Cominform has persistently pursued a declared policy in opposition to the European Recovery Programme to which the British Trades Union Congress has given active support. * * *

The Communist Parties, under the direction of the Cominform, have been specifically ordered to oppose the Marshall Plan. Statements made officially by spokesmen of the Communist Party in Britain prove beyond question that sabotage of the [E. R. P.] is its present aim. Communist influences are everywhere at work to frame

industrial demands for purposes of political agitation; to magnify industrial grievances; and to bring about stoppages in industry.

These facts, some of which were directly before the Congress, most of which are well known, and all of which confirm the congressional judgment, permitted Congress reasonably to conclude, as the Seventh Circuit held in the *United Steel Workers* case and the District Courts held in the *N. M. U.* and the *Warehouse Workers* cases, that extension of the benefits and protection accorded in the Act to labor organizations led by Communists and their supporters would not tend to effectuate the policies of the Act; that such organizations would be likely to utilize the powers accorded exclusive bargaining representatives by the Act to foment strikes and discord rather than to promote the economic welfare of union members, and amicably to settle disputes; and that to vest additional power in the hands of such organizations might constitute a danger to national security.

That Congress possesses the power under the Commerce Clause to cope with such evils will be shown in the following section.

C. CONGRESS HAS AMPLE AUTHORITY UNDER THE COMMERCE CLAUSE TO DENY THE BENEFITS OF THE LABOR RELATIONS ACT TO UNIONS WHOSE OFFICERS FAIL TO SIGN THE AFFIDAVITS REQUIRED BY SECTION 9 (H)

1. Section 9 (h) is reasonably related to an appropriate Congressional objective under the Commerce Clause

That the fomenting in interstate industry of strikes for the purpose of hampering the execution of American foreign policy, or for political purposes unrelated to the subject matters of collective bargaining, constitutes an economic evil amenable to Congressional control under the Commerce Clause is too clear for anything but statement. Appellants do not even suggest that such strikes are not substantive evils, or that they do not substantially affect interstate commerce. Nor do they make the obviously untenable argument that Congress lacks the power to take measures designed to eliminate the causes of strikes which may obstruct interstate commerce. Cf. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1. It is obviously for Congress to determine the appropriate method for combatting these evils. *North American Co.* v. *S. E. C.*, 327 U. S. 686; *United States* v. *Darby*, 312 U. S. 100.

Certainly, when evils result in large part, or in aggravated form, from benefits which Congress itself has created, Congress must possess the power so to restrict those privileges as to prevent their abuse. Congress must have the power to withhold benefits which it confers for the accom-

plishment of legitimate purposes within its constitutional powers from those who, it has cause to believe, may utilize those benefits for different and antithetical purposes. The privileges and benefits of the Labor Relations Act are conferred upon labor organizations by Congress for the accomplishment of specific public purposes; Congress is under no obligation to extend those privileges and benefits to all organizations blindly, without regard to whether such extension will effectuate the policies which Congress seeks to promote. It is no less a legitimate objective of congressional power to guard against the danger of misuse of facilities created by Congress for specified purposes than to create such facilities in the first place.

Judicial "inquiries, where the legislative judgment is drawn in question, must be restricted to the issue whether any state of facts either known or which could reasonably be assumed affords support for it." *United States* v. *Carolene Products Co.*, 304 U. S. 144, 154. The facts known to Congress, and of which this Court can take judicial notice (summarized pp. 21–48, *supra*), show that Communists and their supporters in positions of power in labor unions have used and are likely to use their power for political purposes alien to the objectives which Congress in enacting the National Labor Relations Act desired to promote. These facts afford ample basis for the

Congressional judgment that the avoidance of such abuses required denial to labor organizations led by Communists of the benefits of the Act. "When Congress exercises a delegated power such as that over interstate commerce, the methods which it employs to carry out its purposes are beyond attack without a clear and convincing showing that there is no rational basis for the legislation; that it is an arbitrary fiat." *Carolene Products Co. v. United States*, 323 U. S. 18, 31.

The burden, of course, is upon appellants to establish the lack of a rational basis for the Congressional choice of means. Appellants have made no effort to deny the existence of the facts upon which Congress relied. Although they assert that the Government is relying on "questionable" material (Br. 60), they have not challenged any of the facts set forth; facts contained in any material which might be deemed questionable are amply confirmed by other sources. Nor have appellants shown that in fact Section 9 (h) is not a reasonable method of dealing with the evil with which Congress was concerned.

2. Section 9 (h) meets the clear and present danger test, if that is applicable

Appellants' contention is that it is not sufficient that Section 9 (h) be reasonably related to the attainment of a legitimate objective under the

Commerce Clause, but that the section must be tested under the "clear and present danger" rule because, allegedly, the statute invades the fundamental right of employees to form labor organizations for purposes of collective bargaining, and because the statute deprives union officers of freedom of speech, freedom of the press and freedom of political affiliation. We shall demonstrate in Points II and III, *infra*, pp. 64–113, that the statute invades none of these rights, that Section 9 (h) in no way limits the right to speak or assemble, and that the mere fact that the classification embodied in Section 9 (h) turns on a matter of belief and affiliation does not change the appropriate test of validity from reasonable basis to clear and present danger. The case does not, therefore, come within the exceptional category referred to in the first *Carolene Products* case. See 304 U. S. 144, 152 n.

But if we assume *arguendo* either that there is an invasion of civil rights or that a classification in terms of belief can be justified only by a showing of urgent necessity, such a necessity has been shown to exist here. The lower court in the *National Maritime Union* case specifically so held after extended analysis (78 F. Supp. 165–169), and the court below in this case adopted that opinion as its own.[35]

[35] In the courts below the Board believed it unnecessary to argue that the clear and present danger test had been satisfied, since it thought the test clearly inapplicable. It did

The "clear and present danger" test which appellants claim to be applicable is not a technical verbal formula. *Pennekamp* v. *Florida*, 328 U. S. 331, 334–336, 352–353. It expresses the considered judgment of the Court that, although the First Amendment does not grant absolute rights, the rights with which it is concerned are not to be limited except where the words used or the activity are directly and immediately likely to bring about some substantive evil. The classic expression of the test is regarded as requiring a "close and direct" or "a real and substantial" relation to such an evil. *Id.* at 336.

Although the Court must exercise an independent judgment as to whether the test has been satisfied (*Thomas* v. *Collins*, 323 U. S. 516, 531–532), it has indicated in *Bridges* v. *California*, 314 U. S. 252, 260–261, that where a legislature has "appraised a particular kind of situation and found a specific danger sufficiently imminent to justify a restriction on a particular kind of utterance," and where a determination comes to this Court "encased in the armor wrought by prior legislative deliberation," such a "declaration of the [legislative] policy would weigh heavily in any challenge of the law as infringing consti-

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not intend to concede that the test, properly understood, could not be met, even though there seems to have been some misunderstanding of its position by the dissenting judge in this case (R. 21) and in the *United Steel Workers* case (170 F. 2d 247).

tutional limitations." Here, Congress has made the determination.[36]

The test does not envisage only dangers which may imperil the security of the nation, although as we shall argue, the facts supporting the present legislation could meet even such a standard. The principle, as first stated by Mr. Justice Holmes in *Schenck* v. *United States*, 249 U. S. 47, 52, is that "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils *that Congress has a right to prevent*." [Italics supplied.] In the *Pennekamp* case the Court made it clear that "The danger to be guarded against is the 'substantive

[36] As the District Court stated in the *National Maritime Union* case, 78 F. Supp. at 167: "When clear and present danger exists, * * * must somehow be determined; and it will not be often, if ever, that the presence of potential danger, or clear and present danger, can be conclusively demonstrated until the portended harm has been done. Usually the existence of either is a matter of opinion, and it is for the legislative body to form that opinion in the first instance. Congress must decide whether clear and present danger to a national interest exists, and, if so, must determine upon a way to avert it. If the method chosen intrudes upon an individual right guaranteed by the First Amendment, Congress must evaluate the clashing public and private interests, must note how the one will be affected by the restriction, the other by its absence, and must then decide whether to impose the restriction. We take it that the congressional judgment is final unless there was in fact no clear and present danger, which alone justifies impinging upon sacred individual rights."

evil' sought to be prevented" (*id*, at 335), and "substantive evil" in this context clearly did not refer merely to threats to the safety of the United States.[37] In *West Virginia Board of Education* v. *Barnette*, 319 U. S. 624, 639, the Court stated that the freedoms granted by the First Amendment "are susceptible of restriction only to prevent grave and immediate danger *to interests which the State may lawfully protect.*" [Italics supplied.]

The Court has rejected the argument that the clear and present danger test prevents prohibiting the distribution of religious literature by children (*Prince* v. *Massachusetts*, 321 U. S. 158, 167), or penalizing the use of language likely to cause a public altercation (*Chaplinsky* v. *New Hampshire*, 315 U. S. 568). And the assumption underlying the *Bridges* and *Pennekamp* decisions is

[37] "'The clear and present danger' to be arrested may be danger short of a threat as comprehensive and vague as a threat to the safety of the Republic or 'the American way of life'. Neither Mr. Justice Holmes nor Mr. Justice Brandeis nor this Court ever suggested in all the cases that arose in connection with the First World War, that only imminent threats to the immediate security of the country would authorize courts to sustain legislation curtailing utterance. Such forces of destruction are of an order of magnitude which courts are hardly designed to counter. 'The clear and present danger' with which its two great judicial exponents were concerned was a clear and present danger that utterance 'would bring about the evil which Congress sought and had a right to prevent.' *Schaefer* v. *United States*, *supra*." (*Pennekamp* v. *Florida*, 328 U. S. at 353, Frankfurter, J., concurring.)

that expressions which would in fact constitute a serious danger to the fair administration of justice could be punished. Although these cases involved important substantive evils, none of them were concerned with anything menacing the national security.

The substantive evil here is the danger of harmful obstruction to interstate commerce which is likely to result if Communists are in control of labor organizations. This evil Congress unquestionably has a right to prevent. And leaving Communists in office in such organizations subjects commerce to this danger not only immediately, but clearly and definitely, as experience has shown. See pp. 21–48, *supra*. A direct and immediate method of seeking to avoid such obstructions to commerce is to take steps which may free labor organizations from Communists' control. Inasmuch as such control has in the past led to interruptions to commerce, and there is strong reason for believing that it will continue to do so now and in the future, the clear and present danger test is satisfied.

As the District Court stated in the *National Maritime Union* case (78 F. Supp. at 167), Congress "had before it evidence of instances in which strikes have been called, for political reasons only, through the influence of Communists in unions. That this is true is a matter of general knowledge. * * * It knew that one of the purposes

of the Communist Party is to destroy democratic institutions and that infiltration into labor unions is one of the first steps in the process. In addition to proof of overt acts, it had before it opinions as to the nature and purposes of the Communist Party from persons in position to have knowledge of the subject," (referring to statements of union officers and of President Truman). That court, we think properly, concluded (p. 168), "In considering the matter we have before us the same evidence and information which Congress had in forming its judgment. If that were all, we would not be prepared to say that Congress was wrong in seeing danger and in thinking it clear and present. But we have much more than that. We judicially know the facts of current history and cannot close our eyes to them and to their significance. Events on the national and world stages since the Taft-Hartley Act became law on June 23, 1947, have not removed the basis which the Congress then had for deciding that Communistic influence in labor relations was a clear and then present danger to the national welfare and security. Those events have, on the contrary, emphasized the ground for alarm which Congress felt."[37a]

[37a] Pursuant to authority granted by Executive Order No. 9835, 12 F. R. 1935, the Attorney General has classified the Communist Party, U. S. A., as a subversive, communist organization which seeks to alter the form of government in the United States by unconstitutional means. See 13 F. R. 9366–9369.

The cases suggest that the evils which justify a limitation upon First Amendment rights must be "substantial" or "serious," not a "minor matter of public inconvenience or annoyance," (*Bridges* v. *California*, 314 U. S. 252, 262–263), such as the littering of the streets with handbills. Cf. *Schneider* v. *State*, 308 U. S. 147. But certainly the evil at which Section 9 (h) is directed is a serious one. Use of facilities and benefits accorded by Congress for purposes antithetical to the policies and objectives of the Act is a serious evil which Congress must have power to prevent. Moreover, the abuses take the form of obstructing commerce in the interest of a foreign power which in many fields is actively opposing the United States. This is certainly no light matter.

Indeed, even if the criterion were whether the evil in question was a menace to our national security, Section 9 (h) would be valid. For the national security was in large part precisely what Congress was concerned with, as the repeated reference to the Allis-Chalmers strike shows. The danger in the present state of world affairs of subjecting such industries as the manufacture of electrical equipment and radio communications to the risk of interruption in the interests of a foreign power need no elaboration. See pp. 26–28, 30–33, *supra*. And the clear and present danger test does not require Congress to wait until it is too late before taking precautionary action.

D. SECTION 9 (H) IS AN APPROPRIATE MEANS OF ATTAINING THE CONGRESSIONAL OBJECTIVE

There can be no question but that Section 9 (h) embodies a reasonable method of protecting commerce and the national interest against strikes called by labor leaders affiliated with the Communist Party. Congress could properly consider that not only those union leaders who were themselves Communists or affiliated with the Party, but also those leaders who believed in, or supported organizations which believed in, overthrow of the Government by violence or illegal means, might tend to utilize their powers as exclusive bargaining representatives for objectives alien to collective bargaining concerning "wages, hours, or other working conditions." Certainly, as stated by the Court of Appeals for the Seventh Circuit in the *United Steel Workers* case, *supra*, 170 F. 2d at 266, "it was rational for Congress to conclude that [such persons] were more likely than others to misuse the powers which inhere in union office." Cf. *Bryant* v. *Zimmerman*, 278 U. S. 63, 73, 76–77, discussed at length in the opinion of the District Court in *National Maritime Union* v. *Herzog*, 78 F. Supp. 146, 169–170; *Clarke* v. *Deckebach*, 274 U. S. 392, 396–397; *Hirabayashi* v. *United States*, 320 U. S. 81.

The restriction of the benefits of the statute to labor organizations whose leaders can sign the required affidavit gives the unions an incentive to rid themselves of officers who cannot, and gives

the employees an incentive to designate as their representative for purposes of collective bargaining labor organizations which will not be disqualified by reason of the character of their officers. Since the benefits of the statute are valuable to labor organizations and to their members, Section 9 (h) will tend to cause the removal of Communist officers from American unions, and thereby to minimize the danger of abuse of the privileges granted by the statute and of injury to the interest of the United States.

The affidavit provisions of Section 9 (h) were also intended to accomplish the identification of those union leaders who were Communists and supporters of Communists on the theory that if the union members were aware of such affiliation by their officers they would oust them from office. See *Matter of Northern Virginia Broadcasters, Inc.*, 75 N. L. R. B. 11. Certainly, Congress has the power to require the disclosure by those who compete for employees' support of information which the employees might consider highly relevant to their choice; this is a reasonable method of insuring the intelligent exercise of the employees' freedom to choose their own representatives for purposes of collective bargaining.

It is not argued that Section 9 (h) is not likely to produce these results. Suggestions have been made, however, that other methods of doing so could have been employed instead. But which means of accomplishing its objective should be

chosen was obviously a matter for Congress to decide, and the fact that other methods might also have been available does not affect the constitutionality of any reasonable method adopted.

An alternative proposed in Congress and adopted by the Senate was the requirement, in lieu of an affidavit, that "no union could be certified if any of its officers were Communists" (93 Cong. Rec. 4894). But this would have required the Labor Board in each case to hold a hearing in order to determine whether any of the officers of the unions involved were Communists. As Senator Taft pointed out, in explaining why the conferees rejected the Senate proposal and substituted the affidavit requirement (93 Cong. Rec. 6447):

> That seemed to us impractical. * * * The whole certification might be tied up for months while determination was made as to whether a man was a Communist.

Another alternative would be flatly to forbid Communists and persons believing in the overthrow of the government to be officers of labor organizations. This would have been much more drastic than the affidavit requirement, and might have raised more difficult legal problems than a requirement which does not deprive any persons of the right to be officers, but merely gives the labor organizations a choice as to whether they wish to retain such officials or to enjoy the benefits of the statute. In any event, the fact

that Congress did not make use of a stronger method for achieving its goal does not make the milder one unconstitutional.

Appellants urge that if the objective of Congress was to prevent political strikes, and "assuming also that Congress had the power to eliminate such strikes, an obvious method of preventing that practice would be to prohibit it and punish those who actually are guilty of violating that prohibition" (Br. 79). But Congress had the right to choose a preventive measure, to seek to remove a cause of such strikes before the strikes actually occur. Compare *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1. This is a more effective means of safeguarding the public interest than to leave persons thought likely to instigate such strikes in positions where they can do so, and then to punish them afterwards. The availability of other appropriate means for achieving the end does not invalidate the method Congress has chosen.

The suggestion that the classification is unreasonable and therefore invalid because employers are not required to file similar affidavits requires little comment. "Congress may hit at a particular danger where it is seen, without providing for others which are not so evident or so urgent." *Hirabayashi* v. *United States*, 320 U. S. 81, 100. That rational basis exists for distinguishing in legislative treatment between

labor organizations, on the one hand, and employers on the other, is established by abundant authority. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 46; *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 471–472; *United States* v. *Petrillo*, 332 U. S. 1, 8–9; *American Federation of Labor* v. *American Sash & Door Co.*, No. 27, October Term, 1948, decided January 3, 1949.

Appellants argue that Section 9 (h) is arbitrary in that "it adopts the test of guilt by association" (Br. 74). But when acting in order "to prevent potential injury to the national economy from becoming a reality", Congress has the right to impose a regulation upon a class from which the particular evil is to be anticipated, and the fact that all persons in the class may not engage in the harmful conduct does not make the classification improper so long as it is reasonable. *North American Co.* v. *S. E. C.*, 327 U. S. 686, 710–711. "* * * if evils disclosed themselves which entitled Congress to legislate as it did, Congress had power to legislate generally, unlimited by proof of the existence of the evils in each particular situation." *Ibid.* Section 9 (h), like Section 11 (b) (1) of the Public Utilities Holding Company Act, "is not designed to punish past offenders but to remove what Congress considered to be potential if not actual sources of evil". *Ibid.*

United Public Workers v. *Mitchell*, 330 U. S. 75 and the *Hirabayashi* and *Korematsu* cases (320 U. S. 81 and 323 U. S. 214) present examples of situations in which legislation regarded as reasonable was made applicable to a class of persons even though it was recognized that no harmful conduct was to be expected from many members of the class. These cases are illustrative of the principle that "when it is necessary in order to prevent an evil to make the law embrace more than the precise thing to be prevented it may do so." *Westfall* v. *United States*, 274 U. S. 256, 259; *Purity Extract Co.* v. *Lynch*, 226 U. S. 192, 201–202, and cases cited. Preventive measures of this sort are different from the imputation of personal guilt to an individual for purposes of punishment or the like, such as denaturalization or deportation. Cf. *Schneiderman* v. *United States*, 320 U. S. 118.

II

DENIAL OF ACCESS TO BOARD FACILITIES DOES NOT IMPINGE UPON THE FUNDAMENTAL RIGHT TO SELF-ORGANIZATION FOR PURPOSES OF COLLECTIVE BARGAINING

Appellants contend (Br. 8, 12, 26–27, 29–31) that denial of access to Board facilities, which, under the terms of Section 9 (h), is the sole consequence of non-compliance with the affidavit provision, in itself invades the fundamental right of employees to organize and bargain collectively

with employers through representatives of their own choosing. In support of this contention, appellants assert (Br. 12–17) that a union which is denied access to Board facilities is, as a practical matter, unable to function as a labor organization at all. After equating in this manner denial of access to Board facilities with a prohibition upon functioning as a labor organization, appellants argue further (Br. 27, 29–31) that to condition the union's right to function upon its elimination from official position of persons who cannot or will not file the affidavits contemplated by Section 9 (h) is to deprive such persons of their right to practice the occupation of labor union official and further to deprive the members of the union of their right to select such persons as officers. We shall demonstrate below that denial of access to Board facilities, as contemplated by Section 9 (h), does not, either in law or in fact, deprive any labor organization of the power to function, and that it does not invade any private right of the union or its members to organize for purposes of collective bargaining. Because the statute does not in law or in fact prohibit labor organizations whose officers do not comply with the affidavit provision from functioning, the statute cannot be said even indirectly to deny to anyone the right to act as officer of a labor union, or deny to union members the right to select any officers of their own choosing.

A. DENIAL OF OPPORTUNITY TO PARTICIPATE IN A BOARD ELECTION DOES NOT DEPRIVE A LABOR ORGANIZATION OF ANY PREEXISTING PRIVATE RIGHT

It is important at the outset to emphasize that the fundamental right of employees to associate in labor organizations for purposes of collective bargaining,[38] which appellants claim is invaded by Section 9 (h), does not, on any theory, comprehend a right to compel Congress to require employers to recognize a labor organization or to bargain collectively with it. Certainly Congress was not required by the Constitution to enact the National Labor Relations Act, and the rights under that Act are no more immune from legis-

[38] It is not necessary in this case to decide whether there is a constitutional right to self-organization for purposes of collective bargaining. While certain activities of unions, such as solicitation of members through speeches (*Thomas* v. *Collins*, 323 U. S. 516) and the dissemination of information (*Thornhill* v. *Alabama*, 310 U. S. 88), or the assembling, discussion, or formulating of plans (*Lincoln Federal Labor Union* v. *Northwestern Iron and Metal Co.*, No. 47, October Term, 1948, decided January 3, 1949) are constitutionally protected, no case holds that the right of self-organization for purposes of collective bargaining is otherwise protected by the First Amendment. Certainly the leading cases which refer to such a "right" do not so suggest. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33; *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209; *Texas & N. O. R. Co.* v. *Brotherhood of Ry. Clerks*, 281 U. S. 548, 570. Even though conduct "is engaged in pursuant to plans of an assembly" it is not protected under the First Amendment: when it "affects the interests of other individuals and the general public, the legality of that conduct must be measured by whether the conduct conforms to valid law." *Lincoln Federal Labor Union* v. *Northwestern Iron and Metal Co.*, *supra*, slip op. pp. 5–6.

lative control than other rights created by statute. As the Seventh Circuit stated in upholding the validity of Section 9 (h), *United Steel Workers* v. *National Labor Relations Board*, 170 F. 2d 247, 265, pending on petition for certiorari, No. 431, this Term, in enacting the National Labor Relations Act, "Congress imposed new obligations upon employers and provided administrative machinery for the enforcement of those obligations, but it did not impose those duties because it was under a constitutional obligation to employees or labor organizations to do so. On the contrary, the statute was enacted solely because Congress deemed the imposition of those duties desirable as a means of protecting the public interest in the free flow of commerce."

Furthermore, the denial to unions not complying with Section 9 (h) of access to Board facilities does not prevent them from functioning. Even if such unions are excluded from the ballot, employees favoring them can avoid representation by any other organization by voting against such organization. They will thus retain the same right to bargain through the non-complying union as they would have possessed if the National Labor Relations Act had never been passed. Only if a majority of the employees in a bargaining unit select another labor organization as exclusive representative is the non-complying organization affected; and, in that event, the loss of its right

to represent its members flows not from the Board's action, but from the deliberate choice of the employees."

Appellants contend, however (Br. 12–17), that opportunity to share with other unions in the benefits of the Act is so essential to the effective functioning of a labor union that to permit access to some unions while denying access to others results inevitably in destruction of the excluded organizations and thereby denies their right to organize for purposes of collective bargaining.

" Appellants argue that the right to function as a union was invaded because Section 8 (b) (4) (C) makes it unlawful for a labor organization to strike to compel an employer to deal with it if another labor organization has been certified by the Board. But the other organization will not have been certified unless it has secured the approval of a majority of the employees in the bargaining unit. In addition, the provision in question applies to unions which have complied with Section 9 (h) just as much as to unions which have not. Furthermore, the validity of Section 8 (b) (4) (C) is plainly not subject to attack in this proceeding; the provision is enforceable only through a proceeding instituted by the General Counsel of the Board. Section 10 (l) of the Act; *Watson* v. *Buck*, 313 U. S. 387; *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 461.

The effect of Section 8 (b) (4) (C) upon a non-complying union is the same whether or not they fail to comply with paragraphs (f) and (g) of Section 9 or paragraph (h). In the one situation as in the other, it cannot strike to prevent an employer from dealing with a certified union. In *National Maritime Union* v. *Herzog*, 78 F. Supp. 146, affirmed, 334 U. S. 854, the same argument was advanced by the union. Although the point was not mentioned by either court, the decision, affirmed by this Court *per curiam*, that paragraphs (f) and (g) were constitutional, necessarily rejected the contention. The *N. M. U.* case is analyzed, *infra*, pp. 75–77.

We concede, of course, that the privilege of utilizing the facilities of the Board to compel an employer to bargain collectively and to desist from other unfair labor practices is of great value to labor organizations and that a labor organization denied this privilege is not, *pro tanto,* in as advantageous a position to appeal to employees for designation as bargaining representative as is a competing union to which the privilege is accorded. Congress, indeed, relied exclusively upon this fact to induce labor organizations to comply with the provisions of Section 9 (f), (g) and (h). But the facts do not warrant appellants' attempt to give the impression that a labor organization denied the privilege will inevitably be rejected by employees. The United Mine Workers of America, the United Electrical Radio and Machine Workers of America, C. I. O., the United Steelworkers of America, C. I. O., all non-complying unions, among others, have continued to exist and to function, and in some instances to increase their membership substantially, despite their non-compliance.[40]

Nevertheless, even if it were true that a labor organization's privilege of access to Board facilities was in all instances decisive in the minds of

[40] The officers' report to the 13th convention of the United Electrical Workers, as reported in the UE News, September 11, 1948, p. 5, 8, stated: "Average membership in UE for the convention year August 1947 to July 1948 was at an all-time high, six percent above the previous years record membership."

employees, so that employees uniformly selected complying rather than non-complying unions as their representatives, it would not follow that Congress could be said to have infringed the right of non-complying labor organizations to function. Section 9 (h), like Sections 9 (f) and (g), leaves the right and power to determine whether to be represented by a complying or non-complying union to the voluntary choice of the employees. The most that can be said is that by offering advantages to complying unions which are denied to non-complying unions, Congress induces employees to select the former rather than the latter type of union as bargaining agent. But such inducement neither deprives the employees of the right to select non-complying unions as their representative, nor does it deprive non-complying unions of the right to represent those who choose to designate them.

That legislation may induce individuals voluntarily to exercise their rights in a particular manner rather than in another does not establish that the legislation invades rights or coerces individuals in their exercise. If it did, Congress would have been without power to enact the Social Security Act, in which Congress offered a rebate of ninety percent of the unemployment compensation taxes collected within the state to those states which enacted particular types of unemployment compensation legislation. For it was assumed that

the right to determine whether or not to enact such legislation is reserved by the Constitution exclusively to the states, and if inducement to enact such legislation were deemed to invade this right, or to coerce the states to enact social security legislation, the federal act would not have been permitted to stand. Yet, in *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 585–591, the Court held that although the ninety percent rebate offered to the states constituted powerful "inducement" and "temptation" to enact the congressionally desired legislation, this did not establish "coercion" of the states in violation of the Tenth Amendment. To fail to draw the line between "temptation" and "coercion", said Mr. Justice Cardozo speaking for the Court, is "to plunge the law into endless difficulties." 301 U. S. at 589–590. The Court further held that since the imposition of taxes and the granting of rebates was an appropriate exercise of the power of Congress over taxation and expenditures, the legislation could not be condemned because it tended to accomplish results which Congress could not achieve directly by legislative compulsion.

Appellant seeks to distinguish the *Steward* case (Br. 47) on the ground that there the States could lawfully cooperate with the Federal Government by enacting the legislation Congress desired. But this distinction hardly supports appellants' position in this case. For it certainly cannot be suggested that employees do not have the right to

cooperate with Congress in the attainment of its legitimate goal by selecting complying rather than non-complying unions as their representatives. Where, as in Sections 9 (f), (g) and (h), and in the Social Security Act, Congress grants benefits upon condition, the condition is not to be invalidated unless the conduct required for its fulfillment is unrelated to the legitimate purposes for which the benefit is granted, or to any other legitimate end. Where reasonable relation exists between the condition and the legitimate legislative end to be attained, as the *Steward* case holds, "inducement or persuasion does not go beyond the bounds of power." 301 U. S. at p. 591.

This principle applies even when the exercise of the right which Congress seeks to influence is protected by the First Amendment. *Oklahoma* v. *Civil Service Commission*, 330 U. S. 127; *United Public Workers* v. *Mitchell*, 330 U. S. 75. In the *Mitchell* case it was held that Congress could condition the privilege of federal employment upon non-exercise by employees of their constitutional right to engage in partisan political activity. In the *Oklahoma* case, it was held that Congress could constitutionally condition grants-in-aid to the States upon removal by the States from their payrolls of persons who exercised their constitutional right to engage in political activity. Yet clearly Congress could not constitutionally have prohibited such activity by State employees.

Nor could Congress constitutionally have compelled State governments so to restrict political activity by their employees.

In the *Oklahoma* case, the effect of the legislation was to induce individuals to forego the exercise of rights altogether. The effect of Section 9 (f), (g) and (h), however, is not to induce employees to forego the selection of a bargaining representative, but rather to select a bargaining representative which has met the qualifications for receipt of benefits under federal law, qualifications properly imposed by Congress to protect the objectives of the Act and national security.

In sum, assuming *arguendo* that Congress could not prohibit employees from designating non-complying unions as their representatives, or prohibit non-complying unions from representing their members in collective bargaining, the foregoing cases establish that the action of Congress in Sections 9 (f), (g) and (h), in offering inducements to employees to select complying rather than non-complying unions as their representatives, does not invade the right of employees freely to choose representatives or the right of non-complying unions to function. Congress has "authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end." *Oklahoma* v. *Civil Service Commission*, *supra*, at p. 143. That the adoption of particular means may

have an effect upon activities which Congress may not constitutionally control, does not, as the Court specifically held in the *Oklahoma* case, make the use of such means invalid.

We do not contend, of course, that if the condition contained in Section 9 (h) were totally unrelated to any legitimate objective of Congress,[1] appellants could not raise constitutional objection, merely because the statute does not prohibit non-complying unions from functioning. Just as a tax imposed by Congress is not valid "if it is laid upon the condition that a state may escape its operation through adoption of a statute *unrelated* in subject matter to activities fairly within the scope of national policy and power" (*Steward Machine Co.* v. *Davis*, 301 U. S. at 590, italics added), so the denial of benefits under the Act would not be valid if the conditions which labor organizations are required to meet to obtain those benefits were unrelated in subject matter to objectives which Congress legitimately sought to promote and encourage. We have already demonstrated, however, that the objective which Congress sought to achieve by imposition of the condition contained in Section 9 (h) is a legitimate objective, well within the power conferred upon Congress under the Commerce Clause, *supra*, pp. 49–58, and that the means adopted in Section

[1] Although appellants suggest that the Government argues that Congress can withdraw the privilege of using Government facilities at will, no such argument has been advanced.

9 (h) for accomplishment of that objective are reasonably and directly related to that objective, *supra*, pp. 58–64.

Accordingly, *Frost Trucking Co.* v. *Railroad Commission*, 271 U. S. 583, upon which both appellants (Br. 46–47, 54–55) and Judge Major dissenting in the *United Steel Workers* case rely (170 F. 2d at 260), is wholly inapposite here. In *Stephenson* v. *Binford*, 287 U. S. 251, 272, 275, the Supreme Court explained that the rule of the *Frost* case applied only where there was "no relation" between the condition and the privilege accorded, i. e., where the condition was an end in itself and not a "means to the legitimate end." Where, as here and in the *Stephenson* case, there is a reasonable relationship between the condition and the legitimate objects for which the benefits are given, the legislation is not to be invalidated even where compliance with the condition may involve voluntary surrender of a constitutional right. See Hale, *Unconstitutional Conditions*, 35 Col. L. Rev. 321, 357.

We believe that the decision of this Court in *National Maritime Union* v. *Herzog*, 334 U. S. 854, is dispositive of appellants' claim that denial of the benefits of the Act to unions which do not comply with conditions validly imposed by Congress invades the right of such unions to function or the right of employees to bargain collectively through such unions. The consequence of noncompliance with Sections 9 (f) and (g) are pre-

cisely the same as the consequences of non-compliance with Section 9 (h), and the union in the *N. M. U.* case made precisely the same contentions with respect to the effect upon it of denial of access to Board facilities as do appellants in this case. It was argued there that access to the administrative machinery and benefits of the Act is so essential to the effective functioning of labor unions that to deny such access to some unions while permitting access to others results inevitably in destruction of the excluded organizations and thereby denies their right to organize for purposes of collective bargaining. It was further argued there, as here (Br. 57–62), that because of the "results that flow", access could be denied to certain labor organizations only if some "clear and present danger" required this, and that access could not be made conditional upon filing and reporting requirements which were supported merely as reasonable requirements.

In affirming the judgment of the statutory court and rejecting the position taken by the union on appeal, this Court necessarily held (334 U. S. 854–855), that denial of access to the machinery and benefits of the Act to labor organizations which do not comply with conditions precedent erected by Congress, and granting such access to those which do comply, does not invade the constitutional right of the former so long as

the condition is reasonably related to the objectives for which the facilities of the Act were designated.

B. DENIAL OF THE PRIVILEGE OF PARTICIPATING IN A BOARD CONDUCTED ELECTION TO A LABOR ORGANIZATION WHOSE OFFICERS ARE UNABLE OR UNWILLING TO FILE THE AFFIDAVITS CONTEMPLATED BY SECTION 9 (H) DOES NOT DENY TO UNION MEMBERS THE RIGHT FREELY TO SELECT OFFICERS, NOR DENY TO ANY PERSON THE RIGHT TO HOLD OFFICE IN A LABOR ORGANIZATION.

Appellant's contention (Br. 27, 29–31) that Section 9 (h) denies to union members the right to select officers of their own choosing, and denies to officers who cannot or will not file the affidavits the right to hold office in a union, rests upon the assumption, shown above to be unwarranted, that denial of the benefits of the Act prohibits a labor organization from functioning. This contention likewise is disposed of by the decision in the *N. M. U.* case, *supra*. Thus, if Section 9 (f) had imposed the obligation to file financial reports on one or more officers of the union, rather than upon the union as such, it could hardly have been contended that the Section was an unconstitutional interference with the right of unions to select their own officers merely because to secure the benefits of the statute union members might require their officers to file such returns or oust those officers who refused to do so.

In his dissenting opinion in the *United Steelworkers'* case, *supra*, 170 F. 2d at 259, Judge Major took the position that because the affidavits contemplated by the Section are to be made by

union officers, whereas the denial of benefits affect the union as such, the statute is arbitrary and unreasonable. But this argument overlooks the fact that a union can act only through its officers, and that Section 9 (f), while it speaks in terms of filing by the union, contemplates that such filing will be done by the responsible officers of unions, precisely as does Section 9 (h). If the responsible officer or officers failed or refused to comply with the filing requirements of Section 9 (f) for whatever reason, the union's membership would be placed in precisely the same position as they would if the union's officers failed to file the Section 9 (h) affidavits. The suggestion that the union members desiring to obtain the benefits of the Act would be unable to do so because they could neither compel their officers to file the documents nor oust those who refused to do so is one which even the appellants do not make, presumably because, among other things, recent history demonstrates that such a contention would be wholly without substance.

The argument that Congress is wholly without power to distinguish between bargaining representatives or types of union leadership with respect to bestowing the benefits of the Act, because such distinction tends to influence employees to choose eligible rather than ineligible officers as bargaining representatives, would mean that Congress could not distinguish for this pur-

pose between company-dominated unions and others. By denying to company-dominated unions the benefits of the Act, Congress influences employees to select non-company-dominated unions just as by Section 9 (h) employees are influenced to select non-Communist dominated unions. In neither case is the right of employees to join labor organizations or to select representatives of their own choosing denied or infringed.

The fact that an effect of Section 9 (h) is to induce union members to select as officers persons who comply with Section 9 (h) rather than those who do not, upon which appellant relies to establish that the Section infringes the right of union members to select their own officers, does not, as we have shown above, establish any invasion of this right. Since the selection by union members of officers who execute the affidavits contemplated by Section 9 (h) is a legitimate objective of Congress, the inducement offered to achieve this result "does not go beyond the bounds of power" *Steward Machine Co.* v. *Davis*, 301 U. S. at 591.

By the same token, there is no merit in appellants' contention that because persons who desire to retain union office may be induced to restrict their political activities and beliefs, the statute must be considered as though it prohibited persons who sought union office from engaging in such activities or entertaining such beliefs.

Determination whether or not to file the affidavit is, under the statute, a matter left to the voluntary decision of each union officer. Not only does government not impose any penalty upon officers who refuse to execute the affidavits, but the union members may, or may not, as they voluntarily determine, oust from office one who refuses to execute the affidavit. If a labor organization voluntarily adopted a provision in its constitution, prohibiting Communists from holding union office, as many labor organizations have done before as well as since enactment of Section 9 (h),[42] it could hardly be contended that any right of such persons was thereby invaded.

Since Section 9 (h) does not compel or coerce labor organizations to adopt such provisions, but merely constitutes an inducement to them to take such action, it is clear that Congress has not denied to Communists and their supporters the right to hold office in labor unions. The inducement offered by Section 9 (h) for such action could be deemed unjustified, as we have seen, only if it could be said that Congress had no legitimate concern with whether labor organizations were led by Communist or non-Communist officers. In the light of the evidence set forth above covering the propensities of Communist officers of labor unions to utilize the powers of union office to impede collective bargaining, disrupt interstate commerce by political strikes called in

[42] See Appendix B, *infra*, pp. 144–145.

the interest of Soviet Russia, and to jeopardize national security, it can hardly be suggested that Congress had no legitimate concern with this question.

III

SECTION 9 (H), DOES NOT INVADE APPELLANTS' RIGHTS TO FREEDOM OF SPEECH, OR DENY FREEDOM OF POLITICAL BELIEF, ACTIVITY OR AFFILIATION

A. NOTHING IN SECTION 9 (H) DENIES TO A COMMUNIST, AN AFFILIATE OF THE COMMUNIST PARTY, OR A SUPPORTER OR MEMBER OF AN ORGANIZATION BELIEVING IN OR TEACHING FORCEFUL OR ILLEGAL OVERTHROW OF THE GOVERNMENT, THE RIGHT TO CONTINUE TO BE SUCH

Appellants contend (Br. 26–31, 40–51), that Section 9 (h), by withdrawing access to the facilities of the National Labor Relations Board from unions whose officers cannot, or will not, file the required non-Communist affidavit abridges their right to freedom of speech and freedom of political association in violation of the First Amendment. Arguing that in the absence of a "clear and present danger" any statute which inhibits freedom of expression must fall, appellants insist that Section 9 (h) limits the political beliefs and activities of union leaders, and thus conditions resort to Government facilities upon the surrender of a constitutional right. The short answer to this contention is that even assuming that Congress may not place any restriction upon the right of a union officer to be a Communist, to believe in Communism, or to engage in political activity, Congress may, in creating an agency designed to further collective bargaining and eliminate indus-

trial strife, deny resort to that agency to those who, in the reasonable judgment of Congress, would utilize it to frustrate rather than to attain the statutory objectives.

It is important, at the outset, to emphasize that Section 9 (h) imposes no limitation upon what any labor leader or other person may think or say, orally or in writing, nor does it attempt to prohibit or restrain anyone from joining or supporting any organization. Neither belief, nor speech, nor association is the subject matter of the policy of Section 9 (h). That subject matter, like the subject matter of Sections 9 (f), and (g), is the means provided for Federal protection of federally created public rights in the field of employee self-organization. The object of Section 9 (h), like the object of Sections 9 (f) and (g), is to guard against abuse of that protection and thereby to facilitate the attainment of the legitimate objective of the legislation. *United Steel Workers of America* v. *N. L. R. B.*, 170 F. 2d 247, 263 (C. A. 7), petition for certiorari pending, No. 431, this Term; *National Maritime Union* v. *Herzog*, 78 F. Supp. 146 (D. D. C.), affirmed, 334 U. S. 854.

It is therefore entirely inapposite to the issues here presented to cite, as the Union does, such cases as *Thomas* v. *Collins*, 323 U. S. 516; *Whitney* v. *California*, 274 U. S. 357; *DeJonge* v. *Oregon*, 299 U. S. 353; *Herndon* v. *Lowry*, 301 U. S. 242; *Stromberg* v. *California*, 283 U. S. 359; *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *State*,

308 U. S. 147; *Thornhill* v. *Alabama*, 310 U. S. 88; *Bridges* v. *California*, 314 U. S. 252; and *West Virginia Bd. of Education* v. *Barnette*, 319 U. S. 624. In each of the foregoing cases, this Court was concerned with the effect of legislation, or of executive or judicial action, which imposed a prior restraint upon speech, press, or assembly, or which punished individuals for having published their views or having joined an association, or which required adherence to a belief.

In *Thomas* v. *Collins*, *supra*, for example, this Court held unconstitutional a state statute which imposed a prior restraint (requirement of registration) upon the right through a public speech to solicit membership in a labor organization.[45] There speech itself was restrained by the statute; criminal punishment was imposed on the act of speaking if the speaker had not previously reg-

[45] It may be noted, in passing, that that case did not hold that the states were without power to impose registration or licensing requirements upon the occupation of labor union officer, which carries with it the power to call or instigate political, as well as economic, strikes. That occupation, like the practice of medicine and dentistry, and other fiduciary occupations, affects the interest of union members, and of the public, and is therefore subject to regulation to the extent necessary to protect legitimate public interests. "That the State has power to regulate labor unions with a view to protecting the public interest is, as the Texas court said, hardly to be doubted." *Thomas* v. *Collins*, 323 U. S. at 532. And this Court pointed out in *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 469, "labor organizations are subject to regulation." Accord: *National Maritime Union* v. *Herzog*, 78 F. 2d 146 (D. D. C.) affirmed, 334 U. S. 854.

istered. In the *Herndon, Stromberg,* and *Thornhill* cases, *supra,* the statutes involved made the acts of speaking or of distributing literature, or of displaying symbols a crime. In the *Lovell* case, *supra,* the statute involved imposed a licensing requirement as a condition upon the distribution of literature, and made such distribution without prior license a crime. In the *DeJonge* and *Whitney* cases, *supra,* the statutes involved made the act of joining a lawful organization, or attending a lawful public meeting a crime. In *Saia* v. *New York,* 334 U. S. 558, the statute imposed restraints upon the use of loud speakers, which the Court regarded as a protected instrumentality of speech. In the *Schneider* case, *supra,* the state restricted opportunity for distributing literature by prohibiting distribution on the streets. In the same category is *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624, where, as a consequence only of their religious beliefs, a child's failure to salute the flag was punished by expulsion from school, thereby branding the child a "delinquent," and subjecting its parents to fine and imprisonment. 319 U. S. at 629, 632.

It is to statutes such as these, which impose prior restraints upon speech, press or assembly, or which make speech or the distribution of literature, or attendance at a meeting, or membership in an association, or refusal to take an oath an offense, that the "clear and present" danger rule

to which the Union refers applies. Only statutes which restrict opportunities for the expression or dissemination of views and information, or prohibit the expression of particular views in order to protect some competing public interest must be narrowly drawn to deal with the precise evil which the legislation seeks to curb; only such statutes must define specifically the conduct which is prohibited so that individuals may be entirely free to engage in conduct which the Government may not properly forbid.

As the Court of Appeals for the Seventh Circuit stressed in the *United Steel Workers* case, *supra*, 170 F. 2d at 264, Section 9 (h) does none of these things. It does not deny to Communists, or to supporters of "Communist Front" organizations, the right to speak and to publish freely their views and opinions. It does not deny to them the right to continue to remain members of the Communist Party, or to continue to support "Communist Front" organizations. It does not deny to any person the right to believe in violent overthrow of the Government, or to support organizations which advocate such a program. None of these activities or beliefs is made subject to prior restraint by Section 9 (h); nor does that Section make these activities or beliefs punishable either criminally or by the imposition of civil sanctions.

It may be suggested that although Section 9 (h) does not completely deny the right to hold

and express the views described in the Section, the Section does work a distinct and serious diminution of that right by denying to individuals the right to hold such views and, at the same time, be a union officer. In the first place, however, as we have shown (*supra*, pp. 76–80), Section 9 (h) does not deny to anyone the right to be a union officer; it merely gives the union a strong incentive to select other officers by depriving it of statutory privileges if it does not do so. But since it does make it more difficult for Communists and the like to hold such office, we shall test its validity in this connection on the assumption that Section 9 (h) does deny to Communists the right to hold union office.

Section 9 (h) does not deny to Communists all right to earn a livelihood. At most, Section 9 (h) denies a Communist (we are assuming) the right to be a union officer. That right is no more a civil right in the sense that it can be invaded only on a showing of "clear and present danger" than the right to be a corporate executive. Many statutes limiting the right to engage in special occupations have been sustained if they satisfy the test of rationality, without any suggestion that the clear and present danger rule governing restrictions upon First Amendment rights was in any way applicable.

A labor union officer has fiduciary duties, as well as public responsibilities (see pp. 123–124, *infra*), like a lawyer or an official of a bank or insurance company, and the power to regulate unions (*Thomas* v. *Collins*, 323 U. S. at 532) includes the right to condition the holding of union office upon the satisfaction of reasonable requirements in the public interest. Compare *In re Summers*, 325 U. S. 561; *Kotch* v. *Pilot Comm'rs*, 330 U. S. 552.

It is true that a Communist in union office often has greater access to an audience which will listen to an expression of his political views than a Communist who is not. But such an additional opportunity to reach others, derived from position or wealth, has never been held to be a right subject to regulation only in the most serious of situations. A lawyer may also, by reason of his occupation, be in position to influence other persons' conduct by what he says. But it has never been suggested that such opportunity converts what is, at best, a property right in a position, subject to regulation if there is "basis in reason" for the regulation, into a civil right whose deprivation government must justify on a strong showing of imminent danger sufficient to warrant curtailment of the right. Cf. *Gresaert* v. *Cleary*, No. 49, this Term, decided December 20, 1948, slip opinion, p. 3.

B. SECTION 9 (H) DOES NOT REGULATE POLITICAL AFFILIATION OR BELIEF; THE CLASSIFICATION ADOPTED IS VALID IF REASONABLY RELATED TO THE END CONGRESS COULD LEGITIMATELY ACCOMPLISH

Appellants argue that the affidavit requirement is based upon political affiliation or belief, and that the Constitution forbids discrimination or classification having such a basis. It is important to note just what the statute does say in this respect. The required affidavit must disavow, insofar as here pertinent, two things: (1) membership in or affiliation with the Communist Party, (2) belief in "the overthrow of the United States Government by force or by any illegal or unconstitutional methods."

Appellants' discussion of the scope and meaning of our basic constitutional liberties is entirely in the abstract; nowhere do they even refer to the fact that Congress reasonably concluded that the particular membership and belief here involved when held by an officer of a labor union, was likely to cause such officer to use the powers of his position in a fashion inimical to the policies of the Act and the security of the United States.

Insofar as the Communist Party is concerned, appellants' contention runs that the Party is a political party, and that discrimination or classification on the basis of political affiliation is not permissible. And that argument is thought to be conclusively established by the fact that no such requirement would be permitted as to the Repub-

lican, Democratic, Socialist, Prohibition, or other political parties, as we customarily know them. But the entire point of the legislation is that the Communist Party acts in other fields as well as in the political arena; and the weapons utilized by the party to attain its objectives are not merely the political techniques protected by the Consitution. The legislation concerns activities of the party in the field of strikes and collective bargaining—not its activities in the political field; it seeks to affect techniques of disrupting commerce and endangering national security—not constitutionally protected political techniques. In no sense, therefore, is Section 9 (h) a regulation of mere political affiliation. An organization or a person, some of whose activities would subject it or him to lawful legislative limitation, cannot escape such regulation because of other activities or beliefs which by themselves would be constitutionally protected. *Prince* v. *Massachusetts,* 321 U. S. 158; *Jacobson* v. *Massachusetts,* 197 U. S. 11; *Hamilton* v. *Regents,* 293 U. S. 245, 267; *Reynolds* v. *United States,* 98 U. S. 145; *Cleveland* v. *United States,* 329 U. S. 14, 20; *Stansbury* v. *Marks,* 2 Dall. 213; *People* v. *Vogelgesang,* 221 N. Y. 290.

1. If the Communist Party were merely a political party, seeking to elect to office persons it supports and to cause the adoption by lawful means, consistent with our Constitution, of the program it espouses, of course Congress could not

differentiate its members from others in granting access to Board facilities. But events of which this Court should take notice demonstrate that the Communist Party is far more than this—it is an organization one of whose principles is direct action. Extending its scope of activity beyond that normally engaged in by political parties, the Communist Party contemplates not only winning converts to its ideology by speaking, teaching, and persuading, and not only accomplishing governmental changes through the channels of government established by our Constitution. The phase of Communist Party activities with which we are here concerned is the participation of its members in, and the incitement by its agents of, political strikes. The appellants do not and could not successfully contend that political strikes are beyond the power of Congress to prohibit. Such strikes being within the power of Congress to proscribe, then, are quite different from political programs which are to be put into operation through governmental action taken at the behest of voters who have been persuaded to the desirability of the program. Such governmental action is itself constitutionally protected, with the result that belief in such action, though bearing a reasonable relation to the action, cannot be made a basis for classification. But when the action which is to be anticipated from the holding of a certain belief is not constitutionally protected, constitutional guarantees are not infringed

when that anticipation of action by those holding certain views is made the basis for legislative classification.

The fact that the Communist Party seeks to attain many of its objectives through normal political processes does not prevent government from adopting precautionary legislation with respect to its other activities.

There was ample evidence before Congress that the policy of the Communist Party in this country is to foster by all means the success of Soviet foreign policy even when that policy is in conflict with the policy of the United States. The well-known reversal of the party line of the Communist Party on June 22, 1941, and the parroting of the Soviet opposition to the Marshall Plan by the Communist parties even of the countries to be aided, as well as in the United States, are familiar illustrations. The Communist Party was shown on these occasions to have used its members who were in control of labor organizations operating in areas of vital importance to our economy to accomplish its objectives of furthering Soviet interests whether those interests coincided with, or differed from, the interests of the United States, and no matter how opposed those interests might be to the interests of the union members.

The Communist Party notoriously operates, or attempts to operate, through the control of labor organizations. As appears from the detailed state-

ment (*supra*, pp. 21–48), it has used such control in order to promote Soviet policy, a policy which is, in many respects, hostile to the interest of the United States. The potential effect of strikes by Communist-controlled labor organizations upon the military defense of the United States at critical periods, and upon the present American policy to support the democratic nations in resisting Soviet expansion needs no elaboration. Certainly it must lie within the power of the Government of the United States to prevent labor organizations possessing such power from being dominated by members of an organization which openly is treating the United States as a future enemy.

A regulation aimed at this aspect of Communist activity, by giving labor organizations an incentive to get rid of Communist officers, is obviously related to the safeguarding of the United States against the *conduct* of members of the Party, not against affiliation with the Party or belief in its principles. To the extent that the Communist Party is a political organization, it is left free and unrestrained. Section 9 (h) is thus not concerned with the Communist Party as a political organization. It is properly concerned with other aspects of Communism which Congress may legitimately control in the interest of the United States.

Substantially the same analysis applies to the argument that Section 9 (h) is an attempt to

punish persons having a particular belief. The "belief" in question is a belief in the principles of the Communist Party, or in the overthrow of the Government of the United States by unlawful means.

But such beliefs, however much we may dislike them, were not, as we have shown, the targets of the statute. The Act does not penalize anyone for possessing or expressing them. The target is potential *conduct* which Congress is authorized to exclude from the area of activities protected by the law. Belief and affiliation, it is true, are utilized as the basis for describing the class from whom such potential conduct may be expected. But, as we have shown, *supra*, pp. 21–48), it is the possession of the very beliefs and affiliations named in Section 9 (h) which leads individuals to engage in the conduct which Congress did not desire to protect. Under such circumstances, the Constitution does not inhibit the use of belief and affiliation as a basis for discrimination between those from whom particular conduct may be expected and those from whom it may not.

Here the Act reaches only persons who combine the belief in question with the occupation of a position from which harm is to be expected to a public interest which Congress may legitimately protect. The effort is to prevent persons having such a belief from occupying positions of that sort. The law applies only when there is an

overt act, the holding of a union office, by a person with the belief in question.

A hypothetical example may clarify our position. Assume a group so strongly opposed to private property that it advocates taking whatever one wants wherever one finds it. Although such persons could legitimately form a party for political activity through which a change in the law to permit such conduct would be advocated, a legislature could reasonably prohibit persons having such a belief from being employed as bank guards, or for that matter as bank presidents.

In short, where a belief is likely to cause a person to engage in conduct harmful to the people or the Nation, the legislature may preclude persons of that belief from occupying positions which will enable them to engage in such conduct. The legislature need not wait until the anticipated danger has occurred; it may take reasonable precautions to safeguard the public interest against the reasonable likelihood of danger. To be more specific, Congress need not permit individual Communists to be officers of labor organizations until each individual abuses his position by seeking to bring on a strike which may cripple the United States in the maintenance of its security or in the effectuation of a policy opposed by Soviet Russia. Congress need not leave the barn door open until far more than a horse has been stolen, but may take reasonable anticipatory precautions.

That the Constitution permits regulation of conduct based upon belief when there is reasonable basis to anticipate that a particular belief might lead to conduct which could legitimately be proscribed is shown by the decision of this Court in *In re Summers*, 325 U. S. 561. It was there held that the State of Illinois could, consistently with the First Amendment embodied in the Fourteenth, deny admission to its bar to one, otherwise qualified, who was a conscientious objector to war. This Court took the position that since, in the view of the Illinois Supreme Court, the oath required of applicants for admission to the bar, to support the Constitution of Illinois, carried with it a willingness to perform military service, the applicant's objections to service could be validly treated as a barrier to admission. 325 U. S. at 573.

The rationale of this decision makes clear its direct bearing on the instant case. This Court pointed out that there was no doubt as to the power of Illinois to require military service. 325 U. S. 572. This undoubted power of the State was relevant only as a justification for the requirement that an applicant for admission to the bar swear his willingness to perform such service. Were there no power to require military service, there would be no power to exact an oath foreswearing the applicant's conscientious scruples against such service. Such scruples are beyond the reach of Government except where they bear

reasonably on conduct which Government can legitimately require. That this is the test is made even more clear by the dissent in the *Summers* case. Mr. Justice Black there said (325 U. S. at 578):

> I cannot agree that a state can lawfully bar from a semi-public position a well-qualified man of good character solely because he entertains a religious belief which might prompt him at some time in the future to violate a law which has not yet been and may never be enacted. *Under our Constitution men are punished for what they do or fail to do and not for what they think and believe.* [Italics supplied.]

The quarrel of the dissenters in the *Summers* case was not with the view that belief may be deemed relevant to future conduct and may be the basis for governmental restrictions; it was, rather, that it was wholly illusory, on the facts in that case, to relate the applicant's belief to future illegal conduct. Mr. Justice Black said (325 U. S. at 577): "The probability that Illinois would ever call the petitioner to serve in a war has little more reality than an imaginary quantity in mathematics." In the case at bar, on the other hand, the probability that Communist union officers will cause interruptions to commerce by political strikes is one of the most real of our time.

In another very important respect, this case is a much easier one than was the *Summers* case.

For in that case, the position from which Summers was barred (attorney) had no special relationship to military service; attorneys are certainly no more necessary to the armed forces than most citizens in other occupations. But in this case, the position of union officer has a direct, special and peculiar relationship to strikes in interstate commerce.

The *Summers* case is not the only one in which the constitutional admissibility of governmental restrictions which rest on the relationship between present attitudes and future conduct has been recognized. In *Hirabayashi* v. *United States,* 320 U. S. 81, and in *Korematsu* v. *United States,* 323 U. S. 214, the war power of Congress was held to justify discriminatory treatment invading the civil rights of persons of Japanese ancestry. The Court held that during war with Japan, Congress and the military authorities could reasonably believe that the danger of sabotage was more likely to stem from persons of Japanese ancestry than from other citizens, and accordingly affirmed criminal convictions for such acts as appearing on the streets after curfew hours and remaining in a "military area," which happened to be the convicted citizens' own home. In these cases, membership in a particular race—a mere accident of birth—was held to justify an inference concerning future conduct and to permit restrictions justifiable only in terms of that inference. There, two steps had to be taken in the process of relat-

ing the restriction imposed to conduct which the government could legitimately prohibit. It had first to be assumed that persons of Japanese ancestry might be ideologically sympathetic toward the then Japanese Government. Only on that assumption was there a belief which could, in turn, be related to seditious conduct. In the case at bar, no such assumption as that involved in the first step taken in the Japanese cases is invited. Congress has not required a union officer to take an oath that he is not a Russian; Congress acted merely on the view that those who in fact believed in Communism might well act in accordance with their beliefs.

2. Having established that it is permissible for Congress to relate belief and future conduct and to impose regulations premised on such a relationship, we proceed now to the question whether it is sufficient justification for a legislative classification based on belief or political affiliation that the belief or affiliation be reasonably related to future conduct or whether there must be a showing that the existence of the belief or affiliation creates a "clear and present danger" of the conduct which it is the legitimate objective of the legislature to proscribe. We think that the authorities discussed below demonstrate that the less stringent test is applicable, although we do maintain (see *supra*, pp. 51–58) that the more stringent is met in this case.

It has long been recognized that the Fifth Amendment, though lacking an equal protection clause, guards against legislation by the Federal Government which either imposes regulations upon, or grants benefits to, certain groups and not others, where the basis for distinguishing between those subjected to the regulation, or entitled to receive the benefits, and those not regulated or benefited, is irrelevant to the legitimate purposes for which the regulation is imposed or the benefit granted. See *Hirabayashi* v. *United States*, 320 U. S. 81, 100. Because differences of "color, race, nativity, religious opinions, political affiliations," (*American Sugar Refining Co.* v. *Louisiana*, 179 U. S. 89, 92), "are in most circumstances irrelevant" to the legitimate purposes for which benefits may be granted or regulation imposed, distinctions based upon such factors are, in most circumstances, "therefore prohibited" by the Fifth Amendment. *Hirabayashi* v. *United States*, 320 U. S. 81, 100; *Hurd* v. *Hodge*, 334 U. S. 24. As Mr. Justice Black pointed out, speaking for the Court in *Kotch* v. *Pilot Commr's*, 330 U. S. 552, 556, "a law applied to deny a person a right to earn a living or hold any job because of hostility to his particular race, religion, beliefs, or because of any other reason having *no rational relation* to the regulated activities," could not be supported under the Constitution. [Italics supplied.]

However, this Court has said that, "it by no means follows" that because the fact of race is "in most circumstances irrelevant" to legislative purposes, even that fact is always irrelevant (*Hirabayashi* v. *United States, supra*). Alienage, too, has often been held irrelevant to the objects of specific legislation (*Takahashi* v. *Fish and Game Commission,* 334 U. S. 410), but this Court has said that "it does not follow that alien race and allegiance may not bear in some instances such a relation to a legitimate object of legislation as to be made the basis of a permitted classification." *Clarke* v. *Deckebach,* 274 U. S. 392, 396. Where factors such as these are deemed to be relevant to the attainment of legitimate legislative policies, their use as a basis for distinction "is not to be condemned merely because in other and in most circumstances [such] distinctions are irrelevant." *Hirabayashi* case, *supra,* 320 U. S. at p. 101.

The *Korematsu* and *Hirabayashi* cases, *supra,* afford a striking illustration of the distinction between the types of governmental action to which the clear and present danger rule applies and those to which the "rational basis" test applies. In those cases, the Court considered two questions: (1) whether the possibility of sabotage was so grave and imminent a danger to national security as to justify denial to individuals of their fundamental civil rights to freedom of movement and freedom to choose their own place of residence,

and (2) whether Congress and the military authorities could reasonably believe that the evil to be feared was more likely to stem from citizens of Japanese ancestry, than from other classes of citizens. As to the first question, the Court seems to have applied the "clear and present danger" rule. See 320 U. S. at 99, and 323 U. S. at 217–218. The second question was decided pursuant to the "reasonable relation" rule. On this point, in the *Hirabayashi* case, the Court noted that it could not say that with respect to the specific issue involved there was "no ground for differentiating citizens of Japanese ancestry from other groups in the United States." 320 U. S. at 101.

Applying the approach of these cases to the instant case, it becomes apparent that only if Congress had prohibited Communists and believers in violent overthrow of government from holding office in labor unions, as it has not, and only if appellants further established that the right to hold office in labor unions, like the right to leave one's house after 8 p. m., is a fundamental civil right and that government therefore could not impose reasonable limitations upon the classes of persons who may hold such office (but see p. 83, n. 43, *supra*), would the question be presented whether the presence of Communists and believers in violent overthrow of government in such positions gave rise to a clear and imminent danger of substantive evils which would justify such a restriction.

Where distinctions based on race, religion, alienage, or political belief and affiliation are made in regulatory legislation, the question presented is whether these factors are relevant to the particular valid objects of the regulation. Where such distinctions are made, as in the instant case, in connection with the grant of benefits, the sole question presented is whether the factors used are incidental and reasonably related to the particular purposes for which the benefits are properly granted.

In each case in which this Court has upheld discriminatory treatment, it has looked to the relationship between the ground for discrimination and the benefit thereby denied. And a consideration of these cases reveals that relationships far less substantial than that here evidenced have been held sufficient to justify discriminatory treatment. Thus in *United Public Workers* v. *Mitchell*, 330 U. S. 75, it was held that, in the exercise of its power to promote the efficiency of the public service, Congress could properly bar from public employment persons who exercised their constitutional right to engage in political activity.[*] The Court pointed out that it was

[*] The Court, in passing, quoted Mr. Justice Holmes' classic epigram, "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman." *McAuliffe* v. *New Bedford*, 155 Mass. 216, 220 (330 U. S. at 99, note 34). Compare *Crane* v. *New York*, 239 U. S. 195, 198, and *Clarke* v. *Deckebach*, 274 U. S. 392, upholding the power of a state to bar aliens from public employment.

sufficient to sustain the legislation that Congress "reasonably deemed" the "cumulative effect" of political activity by government employees an interference "with the efficiency of the public service." 330 U. S. at 101. See also, *Oklahoma v. Civil Service Commission*, 330 U. S. 127, 142–143.

The *Mitchell* case did not turn on the ground that government employment is a privilege which government can grant or withhold on any ground. This Court's opinion expressly recognized that Congress could not constitutionally "enact a regulation providing that no Republican, Jew or Negro shall be appointed to federal office, or that no federal employee shall attend Mass or take any active part in missionary work." 330 U. S. 75, 100. The critical distinction between denial of federal employment on grounds such as these and denial on the ground of active participation in political activity is that the former type of affiliations or activities have no relation to the efficiency of the public service; partisan political activity may have. And, since the right to engage in partisan political activity is protected by the First Amendment equally with, for example, the right to affiliate with the Republican Party, the refusal of this Court to test the validity of the regulation in terms of "clear and present" danger demonstrates that legislative classification, even where it is based upon activities or affilia-

tions protected by the First Amendment, is valid unless it is shown that the particular activity or affiliation bears no relation to the legitimate governmental objective which the classification is designed to achieve.

This Court has recognized that Congress has constitutionally excluded anarchists, and could constitutionally exclude Communists, from citizenship (*Schneiderman* v. *United States*, 320 U. S. 118 at 132, 163, 172); presumably on the theory that belief in anarchy or communism is not unrelated to the question whether an alien would make a good citizen (cf. *Turner* v. *Williams*, 194 U. S. 279). But the discrimination against anarchist is no more directly related to a legitimate congressional objective than is the exclusion of Communist-dominated unions from access to the facilities of the Board. See also *Friedman* v. *Schwellenbach*, 159 F. 2d 22 (App. D. C.), certiorari denied, 330 U. S. 838, where the United States Court of Appeals for the District of Columbia upheld the use of the factors of adherence to the Communist Party line and active participation in organizations dominated by the Communist Party as a basis for denying to individuals the privilege of retaining governmental employment. Such beliefs and affiliations were deemed relevant to the loyalty with which individuals might perform their governmental duties.

Even discriminatory state action, which, unlike Section 9 (h), must satisfy the "equal protection" clause of the Fourteenth Amendment (cf. *Currin* v. *Wallace*, 306 U. S. 1, 14), has been upheld by this Court where reasonable grounds can be adduced to support the distinction. Thus *In re Summers*, 325 U. S. 561, already discussed (*supra*, pp. 95–97), held that a state may constitutionally deny membership in its bar to persons who, because of religious conviction, refuse to take an oath to bear arms in time of war. *Hamilton* v. *Regents*, 293 U. S. 245, held that a state may bar from its colleges persons who, for religious reasons, refused to attend classes in military training. *Hawker* v. *New York*, 170 U. S. 189, held that a state could constitutionally prevent persons who had previously been convicted of a felony from practicing medicine. Cf. *Dent* v. *West Virginia*, 129 U. S. 114.

Moreover, while a state may not, under the Constitution, arbitrarily ban aliens from lawful occupations (*Truax* v. *Raich*, 239 U. S. 33; *Takahashi* case, *supra*), it is established that a state may guard against presumed evil propensities of certain aliens by prohibiting all aliens from operating pool halls (*Clarke* v. *Deckebach*, 274 U. S. 392, 396–397); engaging in the insurance business (*Pearl Assurance Co.* v. *Harrington*, 38 F. Supp. 411 (D. Mass.), af-

firmed, 313 U. S. 549); shooting wild game or carrying arms used for sporting purposes (*Patsone* v. *Pennsylvania*, 232 U. S. 138), and even from owning land (*Terrace* v. *Thompson*, 263 U. S. 197; *Porterfield* v. *Webb*, 263 U. S. 225; *Webb* v. *O'Brien*, 263 U. S. 313).

Finally, in *Kotch* v. *Pilot Commissioners*, 330 U. S. 552, it was held that a state could constitutionally deny the right to practice the occupation of river pilot to all except friends and relatives of licensed pilots. Although such a basis for classification would, in most cases, be prohibited by the Constitution, this Court held that because it was not shown that this classification was totally unrelated to the legitimate governmental objective of securing a safe and efficient pilotage system, the legislation as administered was immune from attack.

C. SECTION 9 (H) DOES NOT DENY ACCESS TO FACILITIES AFFORDED BY THE GOVERNMENT FOR THE DISSEMINATION OF INFORMATION ON GROUNDS OF BELIEF

We have shown, *supra*, pp. 81–87, that Section 9 (h) neither illegalizes Communist views or beliefs nor denies to Communists and the like the right to be union officers. We have insisted, rather, that the narrow effect of Section 9 (h) is to withhold the benefits of the National Labor Relations Act from unions whose officers fail to file the affidavits required by that Section. And we have insisted, *supra*, pp. 88–106, that such denial is a regulation

not of belief but of potential conduct—conduct which Congress plainly could proscribe.

The appellants take the view, however, that a showing that there is a reasonable relationship between the evil Congress can combat and any particular views or political beliefs cannot suffice to validate Section 9 (h). They insist that the much more stringent requirement that a clear and present danger be shown is applicable, and that this is shown, beyond peradventure, by the fact that this test has been applied even in cases involving denial of benefits previously granted by government. In support, they cite *Hannegan* v. *Esquire*, 327 U. S. 146; *Milwaukee Publishing Co.* v. *Burleson*, 255 U. S. 407, 417 (dissenting opinion); *West Virginia Board of Education* v. *Barnette*, 319 U. S. 624; *National Broadcasting Co.* v. *United States*, 319 U. S. 190, 226; and *Danskin* v. *San Diego Unified School District*, 28 Cal. 2d 536. (Br. 34–35.)

We have already dealt with the significance to this case of this Court's decision in *West Virginia Board of Education* v. *Barnette, supra*. We have shown that this decision and the many others cited by the appellants struck down governmental acts which impinged immediately and directly on religious or political beliefs. See *supra*, pp. 82–85. Appellants seek, however, especially to assimilate the *Barnette* case to that at bar because, they say, that, too, involved an attempted denial of a "privi-

lege" of attending public school, it being a privilege since private schools were available (Br. 34). But as this Court expressly stated, attendance of the public school was "not optional," and *Hamilton* v. *Regents*, 293 U. S. 245, was expressly distinguished on that ground. 319 U. S. 632. The *Barnette* case, therefore, did not involve a "privilege," but had the effect of penalizing persons of a particular belief (319 U. S. at 629) and hence impinged directly on a civil right.

Other cases cited by appellants only bear a superficial resemblance to this. The *Esquire* decision, the dissent of Mr. Justice Brandeis in the *Milwaukee Publishing* case, the California decision in the *Danskin* case, and the dictum in the *National Broadcasting Co.* case upon which reliance is placed by the appellants, all related to a denial of what may, in a sense, be characterized as a "privilege." In that respect they resemble the situation at bar. But the privileges there afforded by government, unlike the benefits afforded by the Labor Act, were the making available of means for the dissemination of information. *Esquire* and *Milwaukee Publishing* involved the use of postal facilities by magazines and newspapers; the *Danskin* case involved a governmental proffer of school facilities for use as a meeting place but a denial of such facilities to Communists; the *National Broadcasting Co.* case, of course, was concerned with the terms on which the Government could make available radio broadcasting media.

These cases all called for the application of the principle that a government, undertaking to facilitate the dissemination of information or freedom of assembly, cannot pick and choose, without urgent reason for so doing, among the views to be disseminated or the meetings to be held. Under our Constitution, governments have no power to facilitate only the expression of favored views, or meetings of approved groups. But these cases do not suggest that Congress may not impose other conditions on the use of governmental facilities in order to protect the public from injury. *Donaldson* v. *Read Magazine*, 333 U. S. 178, which also involved restrictions upon the use of the mails, proves the contrary.

But the Labor Act was not a governmental proffer of facilities for the dissemination of information; the Act created an agency for the purpose of promoting industrial peace. The denial of such a governmental facility is not at all comparable, in its relation to First Amendment rights, to the discriminatory denial of radio, meeting or postal facilities, and need not be subject to the same stringent limitations.

D. SECTION 9 (H) DOES NOT REQUIRE A "TEST OATH" AS A MEANS OF SUPPRESSING HERETICAL BELIEFS

Since beliefs and affiliations *per se* are, as we have shown, not the targets of the statute, it follows that appellants' equation of the affidavit provision of the act to the test oaths, which were adopted in England during the Restoration Period

and were carried over to some of the American colonies (Br. 24–25), is wholly inapposite. The test oaths stemmed from the Test Acts,[45] enacted by the English Parliament out of hostility to the Roman Catholics. These Acts required all persons holding any office under the Crown and all members of Parliament to subscribe a declaration against transubstantiation.[46] The test oaths, unlike the affidavit provision here, were clearly an attempt to prescribe what shall be orthodox in belief and involved discrimination against the minority group (the Roman Catholics) solely because of prejudice against its views.

The basic aversion of free men to "test oaths" was articulated in our Constitution in Article VI, which provides that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." The judgment, embodied in Article VI, that religious beliefs can be deemed to have no relationship to conduct in public office can have nothing to do with the congressional judgment that a belief in Communism has a great deal to do with a union officer's propensity for political strikes.

Certainly, the mere requirement of a qualifying oath as to one's views is not proscribed by the Con-

[45] 25 Charles II, c. 2; 30 Charles II, st. 2, c. 1.

[46] See 6 Holdsworth, *A History of English Law* (Methmen & Co. Ltd., London, 1924), pp. 199, 181, 184–185; 2 Channing, *History of the United States* (Macmillan Co., 1937), p. 455.

stitution, as many familiar examples show, and is not in itself an evil." So long as the oath requirement is reasonably related to conduct which the Government can proscribe, as distinguished from views which it cannot, it is within the power of Congress to impose.

Related to the appellants' attack on the requirement of an oath, and their characterization of it as an odious test oath as to belief, is their repeated assertion that Section 9 (h) is a product of "unreserved hysteria", a "direct reflection of a widespread and bitter attack upon the civil rights of Americans—an attack which has received an all-

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" Article II, Sec. 1, cl. 8 of the Constitution itself prescribes the "Oath or Affirmation" to be taken by the President "before he enter on the Execution of his Office."

This Court requires an oath or affirmation upon admission to its bar. Rule 2 (4).

All federal employees, the President alone excepted, must take the oath prescribed in 5 U. S. C. 16, which includes a promise to "bear true faith and allegiance to" "the Constitution of the United States."

8 U. S. C. 735a: "A person who has petitioned for naturalization shall, before being admitted to citizenship, take an oath in open court (1) to support the Constitution of the United States, (2) to renounce and adjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen, (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic, and (4) to bear true faith and allegiance to the same."

8 U. S. C. 735b prescribes the precise language of the oath and adds "and that I take this obligation freely without any mental reservation or purpose of evasion."

embracing official sanction", and an attempt to prescribe what shall be orthodox in politics and economics (Br. 92 and *passim*). The short answer to these charges is that "Inquiry into the hidden motives which may move Congress to exercise a power constitutionally conferred upon it is beyond the competency of courts." *Sonzinsky* v. *United States*, 300 U. S. 506, 513–514; *Goesaert* v. *Cleary*, No. 49, this Term, decided December 20, 1948, slip opinion, p. 3; *Veazie Bank* v. *Fenno*, 8 Wall. 533, 548; *McCray* v *United States*, 195 U. S. 27, 56–59; *United States* v. *Doremus*, 249 U. S. 86, 93–94; *Magnano Co.* v. *Hamilton*, 292 U. S. 40, 44, 45. This "Act was not passed because Congress disapproved of the views and beliefs of [the excluded group], but because Congress recognized that * * * persons who entertained [those] views * * * might not use the powers and benefits conferred by the Act for the purposes intended by Congress." *United Steel Workers* v. *National Labor Relations Board, supra*, 170 F. 2d at 264.

In *United States* v. *Schneider*, 45 F. Supp. 848, 850 (E. D. Wis.), District Judge Duffy held unconstitutional a statutory provision denying work relief to Communists on the ground that "There is no necessary or logical connection between the political or social beliefs of a person and his distress." But where, as here, there is a "necessary * * * connection" between membership in or support of the Communist Party, or belief in violent overthrow of government, and the uses to which the powers of

union office may be put, Congress is not precluded by the Constitution from utilizing those facts as a basis for classification. Freedom of political belief or affiliation does not preclude Congress from taking cognizance of tendencies to conduct which may stem from the possession of particular beliefs or affiliations. The doctrine of freedom of belief and affiliation may not be used to blind legislatures to facts of common knowledge, or to preclude legislatures from properly exercising their constitutional power in the public interest.

IV

SECTION 9 (H) IS NOT UNCONSTITUTIONALLY INDEFINITE

Appellants contend (Br. 66–74) that Section 9 (h) is unconstitutional because the facts which union officers are required to aver as a condition to obtaining the benefits of the Act are vague and indefinite. Appellants do not suggest that a union officer would have any difficulty in knowing whether or not he was "a member of the Communist Party" or that "he does not believe in, and is not a member of * * * any organization that believes in or teaches, the overthrow of the United States Government by force * * *". The attack is directed at his knowledge of whether he was "affiliated with" the Communist Party, whether he "supports" an organization anxious to overthrow the Government, and whether such overthrow was to be sought by "unconstitutional methods." Whether these phrases are so indefinite as to re-

quire the invalidation of Section 9 (h) on that ground is a question which can properly be answered only after an analysis of the words themselves in the light of the facts that only wilfully false statements in the affidavits are punishable (see pp. 116–120, *infra*), and that no one has suggested words which, though more incisive, could accomplish the legitimate ends Congress sought to attain.

The expressions "affiliated with" and "supports" are common words whose meaning is generally known, although there will, of course, be a question as to their application to particular borderline situations.[46] We think there can be even less question as to the definiteness of the expression "unconstitutional methods", when used in relation to the overthrow of the Government of the United States. Obviously, the only constitutional method is by amendment to the Constitution—or, if the "overthrow of the Government" is directed merely at the persons holding office in it at a particular time, by replacing them through the peaceful processes of free elections.

The fact that there may be cases in which the applicability of Section 9 (h) is somewhat doubtful does not render the statute unconstitutionally indefinite. Men ordinarily speak in words which lack a mechanical precision of denotation. There will be found around almost every statute an in-

[46] As to the meaning of "affiliates", see *Bridges* v. *Wixon*, 326 U. S. 135, 141.

evitable fringe of uncertainty and doubt. This periphery of indefiniteness may be more extensive in some cases than in others but its existence is ordinarily inescapable.

Furthermore, as this Court has several times noted (even in a case involving the death penalty), "in most English words and phrases there lurk uncertainties." *Robinson* v. *United States*, 324 U. S. 282, 286. "Whenever the law draws a line there will be cases very near each other on opposite sides. The precise course of the line may be uncertain, but not one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk. *Nash* v. *United States*, 229 U. S. 373." *United States* v. *Wurzbach*, 280 U. S. 396, 399.

A statute will therefore not be found constitutionally indefinite because of the possibility of doubt in peripheral cases. If there is a hard core of circumstances to which a statute will unquestionably apply, as to which the ordinary person would have no doubt as to its application, and if this constitutes the mass of situations with which the act deals, constitutional requirements are fulfilled.

That Section 9 (h) is a statute of this sort, despite doubts which may arise in borderline situations, is demonstrated by the fact that literally thousands of officers of labor organizations have, since the passage of the Act, filed the affidavits contemplated by Section 9 (h) without apparent qualms concerning the truth of their assertions.

This Court has recently stated: "That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense." *United States* v. *Petrillo*, 332 U. S. 1, 7; *Robinson* v. *United States*, 324 U. S. 282, 285–286. In the *Petrillo* case, it was recognized that this was particularly true when more specific language suitable to carrying out the legislative purpose was difficult to suggest. In the *United Steel Workers* case, the Court of Appeals for the Seventh Circuit properly observed that Section 9 (h) is "as specific as the nature of the problem permits." 170 F. 2d at 266.

In any event, we are not faced with the necessity of determining the definiteness of the phrases in question in the abstract. Affiants under Section 9 (h) are protected against punishment so long as they act in good faith. The sole penalty provided for the filing of false affidavits under Section 9 (h) is prosecution under Section 35 (A) of the Criminal Code (18 U. S. C. 80). That Section provides criminal penalties for "knowingly and willfully" making fraudulent or fictitious statements to any agency of the Federal Government. Clearly, no affiant could successfully be prosecuted under this Section for filing a false affidavit under Section 9 (h) unless it could be proved that he knowingly lied in making the averments contained in his affidavit.

Inasmuch as only wilfully false statements are punishable, the statute establishes a subjective test, the understanding of the affiant himself. As the lower courts have held, "A union official is simply asked to say whether he is 'affiliated'; *i. e.*, whether he considers himself as affiliated. We may safely assume that any man intelligent and schooled enough to be chosen as a union official will be familiar with the word 'affiliated' and will have a definite idea of its meaning. His notion of the word's significance may not coincide with that of another, and may not be what a dictionary gives. But he is not called upon to define 'affiliated' in his affidavit. He is asked to say whether he considers himself affiliated in the sense in which that word has significance to him. There is no vagueness or uncertainty in his own personal definition." [40]

Section 9 (h) "requires only that persons who knowingly engage in the activities set forth in Section 9 (h), or who knowingly believe in the enumerated doctrines, or who knowingly support organizations which disseminate such doctrines, shall not obtain access to the machinery set up by Congress for the purpose of advancing a specific public policy; hence if an affiant honestly believes that he is not affiliated with the Communist Party, that he does not support any organization which to his knowledge teaches the overthrow of the United States Government by means which he knows to be

[40] *National Maritime Union* v. *Herzog*, 78 F. Supp. at 172.

illegal or unconstitutional, such an affiant would be in no danger of conviction under Sec. 35 (A) of the Criminal Code." [30]

This Court has declared that "The constitutional vice" in an indefinite statute "is the essential injustice to the accused of placing him on trial for an offense, the nature of which the statute does not define and hence of which it gives no warning. See *United States* v. *Cohen Grocery Co.* [255 U. S. 81]. But where the punishment imposed is only for an act knowingly done with the purpose of doing that which the statute prohibits, the accused cannot be said to suffer from lack of warning or knowledge that the act which he does is a violation of law. The requirement that the act must be willful or purposeful may not render certain, for all purposes, a statutory definition of the crime which is in some respects uncertain. But it does relieve the statute of the objection that it punishes without warning an offense of which the accused was unaware." *Screws* v. *United States*, 325 U. S. 91, 101–102. As a consequence, in no case in which *scienter* was clearly made an element of the offense has the Court held a statute invalid for indefiniteness.[31] Conversely,

[30] *United Steel Workers* v. *N. L. R. B.*, 170 F. 2d at 266–267 (C. A. 7).

[31] Section 4 of the Lever Act was held invalid in *United States* v. *Cohen Grocery Co.*, 255 U. S. 81; *Weeds, Inc.* v. *United States*, 255 U. S. 109; and *Small Co.* v. *American Sugar Ref. Co.*, 267 U. S. 233. The statute as quoted in 255 U. S. at 86 reads as though intent were required. But the

in many cases the Court has clearly indicated that the presence of such a requirement removes any question as to an act's validity. *United States* v. *Ragen*, 314 U. S. 513, 523–524; *Gorin* v. *United States*, 312 U. S. 19, 27–28; *Screws* v. *United States*, 325 U. S. 91, 101–105; *Omaechevarria* v. *Idaho*, 246 U. S. 343, 348; *Hygrade Provision Co.* v. *Sherman*, 266 U. S. 497, 502–503; *United States* v. *Petrillo*, 332 U. S. 1; cf. *Winters* v. *New York*, 333 U. S. 507, 519.

Appellants urge, citing *Winters* v. *New York*, 333 U. S. 507, that a higher standard of definiteness is required when a statute impinges against First Amendment freedoms. Our first answer to this

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full text of the Section, as set out in 255 U. S. at 81–82, shows that intent was no part of the clauses under attack.

The accumulation of statutes held invalid in *International Harvester Co.* v. *Kentucky*, 234 U. S. 216, and *Collins* v. *Kentucky*, 234 U. S. 634, was construed by the state court to make unlawful any combination "for the purpose or *with the effect* of fixing a price that was greater or less than the real value of the article" (234 U. S. at 221). [Italics added.]

The statute condemned in *Herndon* v. *Lowry*, 301 U. S. 242, did not in terms require intent, but, as construed by the state court, punished the attempt to incite insurrection, if force was contemplated by the inciter "at any time within which he might reasonably expect his influence to continue" (310 U. S. at 254–255). The statute as thus construed might be thought to require either (1) an intent to stimulate force and violence, or (2) an intent to utter words which "might, at some time in the indefinite future" (301 U. S. at 262) lead to force and violence. It is clear that this Court adopted the latter construction, and thus assumed that the statute reached a person, "however peaceful his own intent" (301 U. S. at 262).

contention is that, for reasons already stated, pp. 81, *et seq., supra*, Section 9 (h) does not. It does not punish for thinking, saying, speaking, assembling, or for anything else protected by the First Amendment. There is thus no occasion in these cases for the special solicitude reserved for cases which, like *Winters* itself, involve laws restricting these freedoms.

But apart from this, even in the field of First Amendment rights, a statute will not be found unconstitutionally indefinite where *scienter* is an element of the offense. For where the press, speech and assembly are involved, as in other situations, the necessity of a willful violation serves to remove the danger that a person will be punished for conduct which he would not know was illegal. We think this Court so recognized in the *Winters* case itself, when it pointed out that in the statute there under consideration, "no intent or purpose is required", 333 U. S. at 519. And no case suggests the contrary.

One additional observation is pertinent. The requirement that a statute not be vague or indefinite applies only where the statute exacts "obedience to a rule or standard" (*Champlin Refining Co.* v. *Corporation Commission*, 286 U. S. 210, 243) which either "forbids or requires the doing of an act" (*Connally* v. *General Construction Co.*, 269 U. S. 385, 391). Section 9 (h) does neither. No one is required to execute the affidavits contemplated by that Section, and thereby to subject himself to even

the possibility of punishment. No one is prohibited from engaging in the activities set forth in that Section, or from believing in the doctrines enumerated. The statute requires only that persons who knowingly engage in such activities, or knowingly believe in the enumerated doctrines, or knowingly support organizations which disseminate such doctrines, shall not obtain access to the machinery set up by Congress for the purpose of advancing a specific public policy, and shall not through willful misrepresentation attempt to obtain benefits barred to them.

V

SECTION 9 (H) IS NOT A BILL OF ATTAINDER

The appellants' contention (Br. 82–92) that Section 9 (h) is invalid as constituting a bill of attainder within the meaning of Art. I, Sec. 9, cl. 3 of the Constitution is, in essence, merely another form of statement of its general contention that Section 9 (h) regulates unorthodox belief, as opposed to the Government's view that Section 9 (h) regulates potential conduct by denying access to Board facilities to persons whose views create a likelihood that they will misuse those facilities.

Section 9 (h) imposes no punishment; it does not even describe qualifications for union office. What it does do is to impose conditions on a union's right to the benefits accorded by the National Labor Relations Act as a means of reducing obstructions to commerce caused by strikes. So viewed, Section

9 (h) contains nothing like the legislative determination of guilt and the legislative punishment which are the characteristics of a bill of attainder. *United States* v. *Lovett*, 328 U. S. 303.

But even assuming, *arguendo*, that Section 9 (h) may be construed as a denial of the right to hold union office, it is, nevertheless, not a bill of attainder. This Court has, on several occasions, upheld the constitutional validity of statutes prescribing qualifications for public office or for practicing a profession, even though they operate to disqualify an incumbent who was unable to meet the prescribed qualifications. *Hawker* v. *New York*, 170 U. S. 189 (statute disqualifying from medical practice persons convicted of a felony before its enactment); *Dent* v. *West Virginia*, 129 U. S. 114 (statute requiring proof of graduation from reputable medical school as condition on legal practice); *Clarke* v. *Deckebach*, 274 U. S. 392 (aliens disqualified from operating pool rooms); *Heim* v. *McCall*, 239 U. S. 175 (aliens disqualified from public employment); *Crane* v. *New York*, 239 U. S. 195 (same); see also *Ex parte Wall*, 107 U. S. 265; *Ex parte Curtis*, 106 U. S. 371. And in both *Cummings* v. *Missouri*, 4 Wall. 277, 319, and *Ex parte Garland*, 4 Wall. 333, 380, this Court, though striking down the enactments in question as constituting bills of attainder, recognized the power of government to impose qualifications. The question on which the Court divided in those cases was simply whether the enactments there involved did, in fact, impose

qualifications or punishment. Thus, in *Cummings*, the Court said: "It is evident from the nature of the pursuits and professions of the parties, placed under disabilities by the constitution of Missouri, that many of the acts, from the taint of which they must purge themselves, have no possible relation to their fitness for those pursuits and professions." 4 Wall. at 319. Compare *In re Summers*, 325 U. S. 561, discussed *supra*, pp. 95–97.

Here we are concerned with the function of acting as officer of a collective bargaining agent. The "rights and duties given to the sole bargaining agent [are] highly fiduciary." *National Maritime Union* v. *Herzog*, 78 F. Supp. at 172. See *Steele* v. *Louisville & Nashville R. Co.*, 323 U. S. 192; *Tunstall* v. *Brotherhood of Locomotive Firemen & Enginemen*, 323 U. S. 210; *Wallace Corp.* v. *National Labor Relations Board*, 323 U. S. 248. And the same must obviously be true as to the officers through whom the bargaining agents act. This Court has compared the function of the bargaining agent to those of government itself. *Steele* v. *Louisville & Nashville R. Co.*, 323 U. S. at 198; *Wallace Corp.* v. *National Labor Board*, 323 U. S. at 255; *J. I. Case Co.* v. *National Labor Relations Board*, 321 U. S. 332, 335.

Plainly, "the qualifications of a person exercising quasi governmental functions may be prescribed by the sovereign. Congress clearly has the right to assure the minority of the workers, who are represented against their choice by the agent, and the employer, who must deal with the agent to

the exclusion of others, that the agent possesses minimum qualifications for the post." (*National Maritime Union* v. *Herzog*, 78 F. Supp. at 173.) And Congress has the power to impose qualifications designed to protect the general public interest as well. That interest may be imperiled if labor union officials subscribe to a philosophy which openly advocates using labor organizations and their strike weapon as a means of undermining the policies of this Government in relation to other nations and our form of Government itself.

A measure imposing qualifications for holding office or following a particular vocation is thus not within the interdiction of Art. 1, Sec. 9, cl. 3, unless it is such only in form and is, in fact, a punishment But, as stated in *United Steel Workers* v. *National Labor Relations Board, supra*, 170 F. 2d at 267, "Section 9 (h) does not rest upon any finding of guilt" and, certainly, imposes no punishment on the basis of such a finding. This is made clear by all that we have already said in the course of this brief. But the matter is put beyond doubt by comparing Section 9 (h) with the enactments stricken in the *Cummings, Garland* and *Lovett cases.*

In all of these "bill of attainder" cases, the enactments held invalid operated as a permanent disqualification. In all, those against whom the enactments were directed could never qualify while the laws stood. Lovett would have been barred from the federal service even though his views were wholly altered in later years; Cummings could never

preach and Garland could never appear in this Court though they deeply repented their affiliation with, or support of, the Confederacy. On the other hand, nothing in Section 9 (h) prevents a union officer from, at any time, filing the qualifying affidavit. Indeed, a proposed amendment which would have foreclosed a change in heart was rejected on the specific ground, stated by Congressman Hartley, that "I do not want to deprive one who has seen the light and who has made an honest reform of the right to be a member of a labor organization." 93 Cong. Rec. 3627. While permanency of disqualification does not *per se* convert a qualification requirement into a punishment (cf. *Hawker* v. *New York, supra,* 170 U. S. 189), the absence of permanency is certainly persuasive that the enactment is not penal.[52]

An analysis of the statute involved in the *Lovett* case (Urgent Deficiency Appropriation Act, 1943, 57 Stat. 431) also provides a revealing insight into the difference between a bill of attainder and a qualifying statute. Section 304, the provision stricken in that case, bore no relation to a measure fixing qualifications for federal office. This is shown by contrasting it with Section 301 whose validity has been unquestioned and which, not unlike Section 9 (h) here involved, provided that no part of the

[52] The line between civil and criminal contempts, based on the familiar distinction drawn between remedial and penal measures, may supply a helpful analogy. *Penfield Co.* v. *S. E. C.*, 330 U. S. 585, 590, and cases cited.

appropriation could be used to pay the salary of any person "who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence." That section, like Section 9 (h), and unlike the stricken Section 304, operated equally upon all persons and expressed the judgment of Congress that anyone who advocates the overthrow of the Government by force or violence is not qualified for Government service.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted.

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APPENDIX A

1. The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) are as follows:

* * * * *

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce * * *

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working

conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

* * * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist

labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfer with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective

bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

2. The pertinent provisions of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. I, 141 *et seq.*) are as follows:

SHORT TITLE AND DECLARATION OF POLICY

SECTION 1. (a) This Act may be cited as the "Labor Management Relations Act, 1947".

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS ACT

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

"FINDINGS AND POLICIES

"SECTION 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or

unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"Experience has further demonstrated that certain practices by some labor organ-

izations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

"DEFINITIONS

"SEC. 2. When used in this Act—

* * * * *

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse,

or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

* * * * *

"RIGHTS OF EMPLOYEES

"SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activites for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

"UNFAIR LABOR PRACTICES

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

"(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

* * * * *

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

"(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: * * * (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

* * * * *

"REPRESENTATIVES AND ELECTIONS

"SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees

shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

"(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided,* That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employes in a bargaining unit of guards if such organization admits to membership, or is af-

filiated directly or indirectly with an organization which admits to membership, employees other than guards.

"(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

"(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the

identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10 (c).

"(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees on strike who are not entitled to reinstatement shall not be eligible to vote. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

"(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

"(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

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"(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor

organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

"(1) the name of such labor organization and the address of its principal place of business;

"(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

"(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

"(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

"(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

"(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

"(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

"(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

"(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish ~~to its~~ members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition

under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits."

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BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

SEC. 303. (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, han-

dling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

(b) Whoever shall be injured in his business or property by reason or any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

APPENDIX B

The following labor organizations bar Communists from office.

A. F. L.

Communists may not hold international or local office in the 16 unions listed below. In the first 11 unions listed, this prohibition results from constitutional clauses barring Communists from membership and, as a consequence from office. The next 4 unions apply the bar to international and local office-holding *per se*, but have no clause specifically covering membership alone. The last union covers international officers only.

Name	Date of constitution [1]	Page
Bridge & Iron Workers	1944	5
Railway Clerks	1947	121–122
Retail Clerks	1947	10
Teamsters	1947	6–7
Telegraphers	1943	32
Chemical Workers	1947	4
Coopers	1947	28
Distillery Workers	1946	7
Glass Bottle Blowers	1946	4
Printing Pressmen	1940	83
Farm Labor	[1948]	4
Hatters	1948	20, 44
Hotel Workers	1947	9
Automobile Workers	1945	8
Upholsterers	1946	40, 136
Seafarers	1944	10

[1] These constitutions are filed with the Affidavits Compliance Branch of the N. L. R. B. as being currently (December 1948) in effect; the date in brackets is for one undated on its face. In all, the constitution of 100 A. F. L. unions were examined. According to the B. L. S. "Directory of Labor Unions" (Bull. 937, p. 3) the A. F. L. had 105 affiliates at the beginning of 1948.

C. I. O.

Communists may not hold international or local office in the 9 unions listed below. In the first 4 unions listed this prohibition results from constitutional clauses barring Communists from membership and in consequence from office. The last 5 unions apply the bar to international and local of-

fice-holding *per se*, but have no clause specifically covering membership alone.

Name	Date of constitution [1]	Page
Oil Workers	1947	4
Rubber Workers	1946	35
Utility Workers	1946	9
Woodworkers	1945	1–3
Steelworkers	1948	5
Marine & Shipbuilding Workers	1944	8
Plaything & Novelty Workers	1946	14
Automobile Workers	1947	22
Textile Workers	1946	12

[1] These are the constitutions filed with the Affidavit Compliance Section as being currently (December 1948) in effect. In all, the constitutions of 35 C. I. O. unions were examined. According to the BLS "Directory of Labor Unions" (Bull. 937, p. 3) the C. I. O. had 40 affiliates at the beginning of 1948.

INDEPENDENTS

Communists may not hold international or local office in the 10 unions listed below. In the first 5 unions listed, this prohibition results from constitutional clauses barring Communists from membership and in consequence from office. The next 4 unions apply the bar to international and local office-holding *per se*, but have no clause specifically covering membership alone. The last union covers international offices only.

Name	Date of Constitution [1]	Page
International Guards Union of America	[1948]	2
International Guards & Watchmens Association	[1948]	5
Guards & Watchmen, Inc	1947	6
United Aircraft Welders of America	1946	2
United Mine Workers of America	1944	49
Gulf States Employees Association	[1948]	1
American Watch Workers Union	[1948]	Art. VIII Sec. 1 (4)
Associated Unions of America	1946	16
Plant Guard Workers of America	1948	5
Interstate Metal Workers	1947	2

[1] These constitutions are filed with the Affidavit Compliance Section as being currently (December 1948) in effect; the dates in brackets are for those undated on their face. The United Mine Workers had not filed its constitution with the Board. The information is based upon the latest copy of its constitution on file in the Board's library. In all, the constitutions of 60 independent unions were examined.

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